

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL  
WITH PROOF  
OF SERVICE

75-1237

B  
P/S

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UNITED STATES COURT OF APPEALS

*for the*

**SECOND CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ERIC BLITZ,

Defendant-Appellant.

---

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

---

APPELLANT BLITZ' APPENDIX

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ROONEY & EVANS  
Attorneys for Defendant-Appellant Blitz  
521 Fifth Avenue  
New York, New York 10017

PAUL J. CURRAN  
United States Attorney  
Attorney for Plaintiff-Appellee  
U.S. Court House, Foley Square  
New York, N. Y.

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## DOCKET ENTRIES

AL DOCKET		TITLE OF CASE	ATTORNEYS
THE UNITED STATES		File # 6-113/85	For U.S.:
ROBIN G. BARON, 1-13			John M. Walker, Jr. AUSA
ERIC BLITZ 1-13 (1-13, 2-13, 3-13, 4-13, 5-13, 6-13, 7-13, 8-13, 9-13)			791-0006
WILLIAM BREN, 1-13 (Cts. 2-6, 7-13, 14-13, 15-13)			
GERMIN GERSTENZANG, 1-13			
STEPHEN R. HILL, 1-13			
PETER HORVAT, 1-13, 2-13, 2-20, 3-13, 4-13, 5-13			
FRANK KADISON, 1-13, 20			
WILLIAM McLEOD, 1-13			For Defendant:
RICHARD G. ORPHEUS, 1-13 (1-13, 2-13, 3-13, 4-13, 5-13, 6-13, 7-13, 8-13, 9-13)			(5) LaRossa, Shargel & Fischel
ROBERT J. ROSAN, 1-13 (1-13, 2-13, 3-13, 4-13, 5-13, 6-13, 7-13, 8-13, 9-13)			522 5th Ave, N.Y.C. 10036
PETER B. ROSENTHAL, 1-13			tele: 687-4100
BARRY M. ROSS, 1-13, 20, 22-25			
JOHN J. SANTIAGO, a/k/a "Sonny Santini," 1-13			
ROBERT TURCO, a/k/a Frank Bruno, 1-13, 20			
and GEORGE C. VAN AKEN, 1-13			

ABSTRACT OF COSTS		AMOUNT	DATE	NAME	RECEIVED	DISBURSED
Ex 18:371 Consp. to commit securities fraud. (Ct. 1)						
Ex 15:77q(a)x, 18:82 Fraud in sale of securities; (Cts. 2-6)						
Ex 18:1341 & 2 Mail fraud. (Cts. 7-11)						
Ex 15:78j(b)ff&17:18&2 Fraud in purchase & sale of sec. (Cts. 12-18)						
Ex 15:30a-17(e)(1) Unlawful compensation to fraud at Sil. (Ct. 19)						
Ex 18:1952&2 Interstate travel in aid of extortion. (Ct. 21)						
18:1623 Perjury. (Cts. 21-25)						
15, 3, 4, 5, 8, 9, 12, 13						
1, 2, 13						
(Twenty Five Counts)						

DATE	PROCEEDINGS
-31-74	Filed indictment. B/W's ordered asto deft's Robert Turco & Kadison. B/W's issued. Gries
-3-75	Deft. Kadison appears (no atty.) court directs a plea of not guilty be entered, 10 days for motions. Bail continued as previously fixed by the Magistrate at \$10,000 personal recognizance bond secured by \$1,000 cash. Deft. Turco appears (atty. present) pleads not guilty, 10 days for motions. Bail set at \$10,000 Personal recognizance bond secured by \$1,000. Deft. fingerprinted and photographed. Griesa, J. Case assigned to Bensal, J. as a superseding indictment, 74-cr-798.

DOCKET ENTRIES


DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1/7/75	Filed appearance bond for Robert Turco in the sum of \$10,000.		
1/11/75	Filed Govt.'s bill of particulars.		
1/11/75	Filed deft. R. Rosan's suppl. affidt. in support of motion for severance		
1/13/75	Filed (R. Turco) warrant for arrest of deft. and return, executed on 1/2/75 by arresting R. Turco on 1/3/75 at the U.S. Courthouse room 301B.		
1/20/75	Filed deft. R. Rosan's notice of motion re: severance and dismissal of count 1 of count one of the indictment.		
1/20/75	Filed deft. R. Rosan's memo. of law in support of motion for severance & dismissal of count 1.		
1/22/75	Wm. McLeod - filed deft.'s acknowledgment of constitutional rights.		
1/22/75	S. Hill- filed deft.'s acknowledgment of constitutional rights.		
1/22/75	J. Santiago- filed deft.'s acknowledgment of constitutional rights.		
1/24/75	Filed Govt.'s affdvt. re: inspection of personal property of G. Van Alke		
1/27/75	Filed memo-end. on motion of R. Rosan for severance, etc. denied. Bonsal		
1/14/75	Deft. Stephen R. Hill (atty. Barry Feiner present) pleads guilty to Ct. only. P.S.I. ordered. Date for sentence 3/20/75. Deft. cont'd present bail. Remaining counts opened. Bonsal, J.		
1/14/75	Deft. William McLeod (atty. Edward Panzer present) pleads guilty to count 1 only. P.S.I. ordered. Date sentence 3/3/75. Deft. cont'd on bail. Remaining counts opened. Bonsal, J.		
1/14/75	Deft. Peter B. Rosenthal (atty. Morton Robson present) pleads guilty to count 1 only. P.S.I. ordered. Date for sentence 3/3/75. Deft. cont'd on bail. Remaining counts opened. Bonsal, J.		



DOCKET ENTRIES

U.S. District Court Docket Continuation

DATE	PROCEEDINGS
1/14/75	Deft. John J. Santiago (atty. Stuart Holtzman present) pleads guilty to count 1 only. P.S.I. ordered. Date for sentence 3/3/75. Deft. cont'd. on bail. Remaining counts opened. Bonsal, J.
1/14/75	Deft. George C. Van Aken (atty. Richard Williamson present) pleads guilty to count 1 only. P.S.I. ordered. Date for sentence 3/3/75. Deft. cont'd. on bail. Remaining counts opened. Bonsal, J.
1/24/75	Deft. Robin Baron (atty. Norman Horwitz present) pleads guilty to count 2. Presentence report ordered. 3/20/75 Set for sentence. Bail cont'd. Bonsal, J.
1/24/75	Deft. Erwin Gerstenzang (atty. Robert Mitchell present) pleads guilty to count 1. P.S. report ordered. 3/20/75. Set for sentence. Bail cont'd. Bail cont'd. Bonsal, J.
1/24/75	Deft. Barry Ross (atty. Thomas Fitzpatrick present) pleads guilty to count 1. P.S. Report ordered. Bail cont'd. 3/20/75 sett for sentence. Bonsal, J.
1/27/75	Jury empanelled. Trial begun as to defts. Blitz, Drew, Horvat, Orpheus, Rosan. Bonsal, J.
1/28/75	Trial cont'd.
1/29/75	Trial cont'd.
2-03-75	Trial cont'd.
2-04-75	Trial cont'd.
2-05-75	Trial cont'd.
2-06-75	Trial cont'd.
( 2-07-75	Trial cont'd.
2-10-75	Trial cont'd.
2-13-75	Trial cont'd.
2-14-75	Trial cont'd.
2-18-75	Trial cont'd.
2-19-75	Trial cont'd.
02-20-75	Trial cont'd.
2-21-75	Trial cont'd.
2-24-75	Trial cont'd.
2-25-75	Trial cont'd.

-cont'd. on next page- 

DOCKET ENTRIES

PROCEEDINGS

Date  
Judgm

DATE	PROCEEDINGS	Date Judgm
-26-75	Trial cont'd.	
-27-75	Trial cont'd.	
-28-75	Trial cont'd.	
03-75	Trial cont'd. Count 1 dismissed, Blitz ct. 2 - 6 dismissed Drew, Blitz, Horwat, Orpheus, Rosan.	
04-75	Trial cont'd. and concluded. Deft. Blitz guilty ct. 19 acquitted cts. 7,8,9,10,11,12,13,14,15,16,17 & 18. Deft. Drew guilty cts. 1,7,8,9,10,11,12,13 acquitted cts. 14,15,16,17, & 18. Deft. Horvat guilty cts. 1,7,8,9,10,11,12,13,14,15,16,17,18. Deft. Rosan acquitted cts. 1,7,8,9,10,11,12,13,14,15,16,17,18. Deft. Orpheus guilty cts. 1,7,8,9,10,11,12,13,14,15,16,17,18. Discharged. Jury polled. Pre-sentence reports ordered. April 21, 1975 set for sentence. Bail cont'd. Bonsal, J.	
06-75	Filed affdvt. of Philip T. Feiring re: affirmation filed following hearing held on 01-15-75.	
07-75	Filed transcript of proceedings, dated Jan. 15, 16, 1975.	
07-75	Filed transcript of proceedings, dated Jan. 20, 1975.	
07-75	Filed transcript of proceedings, dated Jan. 21, 1975.	
07-75	Filed transcript of proceedings, dated Jan. 24, 1975.	
-19-75	Filed Govt.'s sentencing memorandum.	
19-75	Filed Govt.'s notice of readiness for trial (defts. R. Turco F. Kadison Frank Kadison- filed papers orig. filed with Mag. Raby:	
24-75	(1) docket entry sheet (2) indictment warrant (3) disposition sheet (4) appearance bond.	
28-75	Filed transcript of record of proceedings, dated 1/14/75	
2-75	Filed transcript of record of proceedings, dated 2/5-6-7/75	
2-75	Filed transcript of record of proceedings, dated 2/11-13/75-18-19/75	
2-75	Filed transcript of record of proceedings, dated 2/20-21-24-25/75	
2-75	Filed transcript of record of proceedings, dated 2/26-27-28-75	3/3-4/75
2-75	Filed transcript of record of proceedings, dated 1/27-29/75	2/3-4/75
-09-75	Filed Govt.'s suppl. sentencing memorandum.	
-14-75	Filed deft. Orpheus' notice of motions for judgment of acquittal and dismissal ret. 4-21-75.	
-14-75	Filed deft. Blitz's notice of motion re: new trial.	
-14-75	Filed deft. Blitz's memo. of law re: support motion for new trial.	
-15-75	Filed deft. Horvat's notice of motion re: judgment of acquittal/ new trial.	
-15-75	Filed deft. Horvat's memo. of law in support of motion for judgment of acquittal/ new trial.	
21-75	Wm. Drew filed CJA 20 appointment of H. Elliot Wales and approval for payment of fees of atty. Bonsal, J. issued copies CJA Clerk	
23-75	Filed transcript of record of proceedings, dated 1-7-75.	

-cont'd on next page-



## DOCKET ENTRIES

DATE	PROCEEDINGS	Date of Judgment
4-23-75	Filed deft. G. Van Aken's notice of motion for leave to withdraw and supporting affdvt.	
5-23-75	Filed Govt.'s affdvt. re: opposition to motions of E. Blitz, R. Orpheus & P. Horvat for new trial, judgment of acquittal, etc.	
5-23-75	Filed Govt.'s memo. of law re: opposition to motions, etc.	
5-30-75	Filed Govt.'s sentencing memorandum (G. Van Aken)	
5-01-75	Filed memo-ent. on motion docketed 4-23-75. It appearing that deft. Van Aken does not consent. Motion denied. Bonsal, J. mn	
5-19-75	Filed deft. G. Van Aken's notice of motion: for leave to withdraw and supporting affdvts. of atty. etc. = 75-471	
5-15-75	Filed JUDGMENT-GEORGE VAN AKEN (atty. present) deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period OF THREE (3) YEARS on count 1, to run concurrently with sentence imposed on 73 Cr. 654. AND deft. is FINED \$10,000. on count 1. Fine is to be paid or the deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. Counts 2 thru 18 are dismissed on motion of deft.'s counsel with consent of the Govt. Deft. cont'd on present bail until 5-28-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.	
5-23-75	R. Orpheus- filed unsecured personal recognizance bond pending appeal in the sum of \$10,000.	
5-23-75	W. Drew- filed unsecured personal recognizance bond pending appeal in the sum of \$50,000.	
5-28-75	Wm. Drew- filed notice of appeal from judgment of conviction. Mailed copies.	
5-22-75	STEPHEN R. HILL (atty. present) Filed JUDGMENT # 75-473 - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR on count 1 and FINED \$5,000. Fine is to be paid or the deft. is to stand committed until the fine is paid or he is otherwise discharged accordingly to law. Deft. is cont'd. on present bail until 6-12-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.	
5-22-75	WILLIAM McLEOD-(atty. present) Filed JUDGMENT-deft. is committed to custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR on count 1. Execution of sentence is suspended. Deft. is placed on Probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court. Counts 2 through 18 are dismissed on motion of deft.'s counsel with consent of the Govt. Bonsal, J. issued all copies.	

## DOCKET ENTRIES

1226

Judge Bonsal

Page 6

44-1037

DATE

PROCEEDINGS

FILE NO.

- 22-75 BARRY M. ROSS (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR on count 1 pursuant to Section 3651 of T. 18, U.S. Code, as amended, with provision that the deft. be confined in a JAIL type institution for a period of THREE (3) MONTHS as provided in the aforesaid section. Execution of the remainder of the sentence is suspended and the deft. is placed on probation for a period of TWO (2) YEARS, to commence upon expiration of confinement, subject to the standing probation order of this Court. Counts 2 thru 18, 20, 22 thru 25 are dismissed on motion of deft.'s counsel with consent of the Govt. Deft. is continued on present bail until 6-12-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.
- 22-75 ARWIN GERSTENZANG (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment. Imposition of sentence on count 1 is suspended. Deft. is placed on probation for a period of ONE (1) YEAR, subject to the standing probation order of this Court. Counts 2 thru 18 are dismissed on motion of deft.'s counsel with consent of the Govt. Bonsal, J. issued all copies.
- 22-75 RICHARD G. ORPHEUS (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for a period of THREE (3) MONTHS on count 1. Imposition of sentence on counts 7 thru 13 is suspended. Deft. is placed on probation for a period of TWO (2) YEARS, to commence upon expiration of confinement imposed on count 1, subject to the standing probation order of this Court. Bail pending appeal fixed in the amount of \$10,000. Court recommends that the deft. continue methadone treatment during his period of confinement. Bonsal, J. issued all copies.
- 22-75 WILLIAM DREW (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of SIX (6) MONTHS on count 1. ONE (1) YEAR on each of counts 7 thru 13. Execution of sentence on counts 7 thru 13 is suspended. Deft. is placed on probation for a period of TWO (2) YEARS, to commence upon expiration of confinement imposed on count 1, subject to the standing probation order of this Court. Bail pending appeal fixed in the amount of \$50,000. Personal Recognizance Bond. Bonsal, J. issued all copies.
- 23-75 Filed Govt.'s affdvr. re: opposition to deft. G. Van Aken's motion for reduction of sentence. (also 73 Cr. 654)
- 22-75 Filed memo-end. on motion docketed 4-14-75. Motion denied. Bonsal, J. (also in 74 Cr. 798)
- 22-75 Filed Stip. & Order that the firm of La Rossa, Shargel & Fischetti be substituted as attys. of record for S. Hill. Bonsal, J.
- 23-75 Filed deft. Blachard G. Orpheus' notice of appeal from judgment of 6-23-75. mailed copies

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## DOCKET ENTRIES

## PROCEEDINGS

Date of  
Judgment N

- 28-75 ROBIN C. BARON- Filed JUDGMENT # - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of NINE (9) MONTH on count 2 and FINED \$5,000. on count 2. Fine is to be paid or the deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. Counts 1 and 3 thru 18 are dismissed on motion of deft.'s counsel with the consent of the Govt. Deft. is cont'd. on present bail until 6-11-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.
- 9-75 ERIC BLITZ- Filed JUDGMENT # - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR and FINED \$5,000. on count 19. Fine is to be paid or the deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. Bail pending appeal fixed in the amount of \$25,000. P.R.B. Deft. is to surrender in Tacoma, Wash. Sentence is stayed pending prompt prosecution of appeal. Bonsal, J. issued all copies.
- 9-75 JOHN J. SANTIAGO- Filed JUDGMENT- deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR on count 1 pursuant to Section 3651 of Title 18, U. S. Code as amended, with provision that the deft. be confined in a JAIL type institution for a period of SIX (6) MONTHS as provided in the aforesaid section. Execution of the remainder of the sentence is suspended and the deft. is placed on probation for a period of TWO (2) YEARS, to commence upon expiration of confinement, subject to the standing probation order of this Court. Counts 2 thru 18 are dismissed on motion of deft.'s counsel with consent of the Govt. Deft. is continued on present bail until 6-30-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.
- 5-75 Filed memo-end. on motion docketed 5-19-75 - motion granted. Bonsal, J. ra
- 5-75 Filed deft. G. Van Aken motion re: vacate sentence, appoint counsel, etc.
- 5-75 Filed memo-end. on motion docketed this date... Accordingly, deft.'s motion to vacate or reduce his sentence is denied. Deft.'s motion for appointment of counsel at resentencing is also denied. Bonsal, J. mn
- 6-75 Filed deft. John J. Santiago's notice of appeal from judgment of 5-29-75. mailed copies.
- 6-75 Filed deft. Eric Blitz' notice of appeal from judgment of conviction. mailed copies.
- 6-75 Filed deft. Eric Blitz's notice of appeal from judgment of 6-6-75. mailed notices.
- 9-75 Filed Govt.'s suppl. sentencing memorandum.
- 10-75 Filed deft.'s (Stephen Hill) notice of motion re: reduction of sentence. rec. 6-12-75.

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DOCKET ENTRIES

Date	Date of Judgment
11-75	
Filed ORDER TO SHOW CAUSE - re: order setting aside judgment of conviction of deft. Robin Baron, etc. ret: 6-16-75. Bonsal, J. mn.	
1-75	
Filed MEMO-END. on motion docketed 6-10-75. Deft. Hill's surrender date adjourned to 6-19-75, 10:30 AM room 505. Bonsal, J. mn	
6-11-75	
E. Gerstenzang- filed CJA 20 approval for payment of fees of atty. Mailed copies CJA Clerk. Bonsal, J. (also 74 Cr. 793)	
13-75	
Filed G. Van Aken's notice of appeal from order of 6-5-75 denying reduction of sentence. (mailed copies)	
6-9-75	
PETER B. ROSENTHAL (atty. present) Filed JUDGMENT- deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR on count 1 pursuant to Section 3651 of T. 18 U.S. Code, as amended, with provision that the deft. be confined in a JAIL type institution for a period of SIX (6) MONTHS as provided in the aforesaid section. Execution of the remainder of the prison sentence is suspended and the deft. is placed on probation for a period of ONE (1) YEAR, to commence upon expiration of confinement, subject to the standing probation order of this Court AND deft. is FINED \$10,000. on count 1. Fine to be paid or the deft. is stand committed until the fine is paid or he is otherwise discharged according to law. Deft. is continued on present bail until 7-23-75 at which time he is to surrender for service of sentence. Counts 2 thru 18 are dismissed on motion of deft's counsel with consent of the Govt. Bonsal, J. issued all copies.	
16-75	
Filed ORDER that deft. P. Rosenthal surrender to commence service of the sentence imposed on 6-9-75 directly to the authorities in charge of such institution as may be designated by the Bureau of Prisons, with the Court's recommendation that such surrender be to the authorities in charge of the Fed. Prison Camp at Allenwood, Penna., etc. Bonsal, J. mn	
17-75	
Filed memo-end. on motion docketed 4-15-75 Motion denied after argument. Bonsal, J. mn	
17-75	
Filed memo-end. on motion docketed 6-11-75 Motion denied after argument. Bonsal, J. mn	
17-75	
PETER HORVAT (atty. present) Filed Judgment - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of SIX (6) MONTHS on count 1: imposition of sentence on counts 2 thru 18 is suspended. Deft. is placed on probation for a period of TWO (2) YEARS to commence upon expiration of confinement imposed on count 1, subject to the standing probation order of this Court. Bail pending appeal is fixed at \$10,000 P.R.B. Bonsal, J. issued all copies.	
17-75	
Deft. Baron given to 6-25-75 to surrender upon consent of Govt. Bonsal, J.	



DOCKET ENTRIES

14 Cr. 1226

## PROCEEDINGS

- 75 Filed deft. R. Baron's notice of appeal from judgment of 6-16-75.  
mailed copies.
- 24-75 Filed deft. P. Horvat's notice of appeal from judgment of  
6-16-75. mailed copies.

4 FEB 1976  
RECEIVEDA. E. Thompson  
Deputy Clerk

INDICTMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA :

- v - :

INDICTMENT

ROBIN G. BARON, :  
ERIC BLITZ :  
WILLIAM DREW, :  
ERWIN GERSTENZANG, :  
STEPHEN R. HILL, :  
PETER HORVAT, :  
FRANK KADISON, :  
WILLIAM McLEOD, :  
RICHARD G. ORPHEUS, :  
ROBERT J. ROSAN, :  
PETER B. ROSENTHAL, :  
BARRY M. ROSS, :  
JOHN J. SANTIAGO, a/k/a "Sonny Santini," :  
ROBERT TURCO, a/k/a Frank Bruno, :  
and GEORGE C. VAN AKEN, :

74 Cr. 1226S

Defendants. : :

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The Grand Jury charges:

Introduction

1. At all relevant times herein, Elinvest, Inc. ("Elinvest"), was a New Jersey corporation the shares of which were traded in the public market place. Prior to April, 1971, Elinvest was a corporate "shell" without any substantial assets.

2. At all relevant times herein, Leisure Time Marine Corporation ("LTMC") was a New York corporation the shares of which were privately held, not registered under the securities laws of the United States, and not traded in the public market place. The principal asset of LTMC was a marina on Long Island,



INDICTMENT

New York.

3. The defendant ROBIN G. BARON ("BARON"), at all relevant times herein, was the owner of Baron and Co., Inc., a New Jersey Stock brokerage firm registered with the United States Securities and Exchange Commission ("SEC").

4. The defendant ERIC BLITZ ("BLITZ"), at all relevant times herein, was an officer and employee of the Astron Fund, Inc., a mutual fund located in Tacoma, Washington.

5. The defendant WILLIAM DREW ("DREW"), at all relevant times herein, was not regularly employed.

6. The defendant ERWIN GERSTENZANG ("GERSTENZANG"), at all relevant times herein, was not regularly employed.

7. The defendant STEPHEN R. HILL ("HILL"), at all relevant times herein, was an attorney admitted to practice in the State of New York and a partner in a New York law firm which was corporate counsel to LTMC through April, 1971, and, thereafter, to Elinvest.

8. The defendant PETER HORVAT ("HORVAT"), at all relevant times herein, was employed as a securities salesman at Baron and Co., Inc.

9. The defendant FRANK KADISON, at all relevant times herein, was the President of Mark Scott Securities Corp.

10. The defendant WILLIAM McLEOD ("McLEOD"), at all relevant times herein, was the owner of Ridgway, McLeod and Associates, a New Jersey stock brokerage firm registered with the SEC.

11. The defendant RICHARD G. ORPHEUS ("ORPHEUS"), at all relevant times herein, was an unemployed securities trader.

INDICTMENT

12. The defendant ROBERT J. ROSAN ("ROSAN"), at all relevant times herein, was an attorney admitted to practice in the State of New York and the owner of R. J. Rosan and Co., Inc., a New York, New York, stock brokerage firm.

13. The defendant PETER B. ROSENTHAL ("ROSENTHAL"), at all relevant times herein, was employed as a securities trader and salesman at a New York, New York, stock brokerage firm registered with the SEC.

14. The defendant BARRY M. ROSS ("B. ROSS"), at all relevant times herein, was employed as a securities trader at M.S. Wien and Co., Inc., a New Jersey based stock brokerage firm registered with the SEC.

15. The defendant JOHN J. SANTIAGO, a/k/a "Sonny Santini" ("SANTINI"), at all relevant times herein, was not regularly employed.

16. The defendant ROBERT TURCO, a/k/a Frank Bruno, at all relevant times herein was associated with Mark Scott Securities Corp.

17. The defendant GEORGE C. VAN AKEN ("VAN AKEN"), at all relevant times herein, was unemployed and had formerly been a principal of a New York, New York, stock brokerage firm.

COUNT ONE

The Conspiracy

The Grand Jury further charges:

1. From on or about May 1, 1970, up to and including the date of the filing of this indictment, in the Southern District



INDICTMENT

of New York and elsewhere, the defendants BARON, BLITZ, DREW, GERSTENZANG, HILL, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO and VAN AKEN, and Larry Berman, John Bradley, John A. Brady, George J. Linder, Michaelina Martel, H. William Rambusch, Jr., Mark E. Ross, Enoch Van Aken and Glen F. Woo, named herein as co-conspirators but not as defendants, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States and to violate the following laws of the United States, among others: Title 15, United States Code, Sections 77q(a), 77x, 78j(b), 78ff and Rule 10b-5 (17 CFR Section 240.10b-5) promulgated and issued thereunder by the SEC, and Title 18, United States Code, Section 1341.

Objects of the Conspiracy

2. It was a part of said conspiracy that said defendants and their co-conspirators unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, stock of Elinvest, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, would: (a) employ devices, schemes and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and, (c) engage in transactions, practices and courses

INDICTMENT

of business which would and did operate as a fraud and deceit upon the purchasers of Elinvest stock.

3. It was further a part of said conspiracy that said defendants and their co-conspirators unlawfully, wilfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstates commerce and of the mails, would use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of the stock of Elinvest in contravention of Rule 10b-5 (17 CFR Section 240.10b-5), a rule prescribed by the SEC as necessary and appropriate in the public interest and for the protection of investors.

4. It was further a part of said conspiracy that said defendants and co-conspirators, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, unlawfully, wilfully and knowingly and for the purpose of executing said scheme and artifice and attempting so to do would cause to be delivered by mail according to the direction thereon, certain matter to be sent and delivered by the Post Office Department.

Means of the Conspiracy

5. Among the means by which the defendants and their co-conspirators carried out the conspiracy were the following:

(a) Defendant VAN AKEN would obtain control of the business and operations of LTMC.

(b) The defendants VAN AKEN and HILL and co-conspirators



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Glen F. Woo and H. William Rambusch, Jr., would convert LTMC, a private company whose shares were not publicly traded into a "vehicle" for public trading by combining LTMC with Elinvest, a corporate "shell" without any substantial assets, but whose shares were publicly traded, and by causing the ownership interests of the shareholders of LTMC in LTMC's business and assets to be transformed from LTMC stock into Elinvest stock.

(c) On or before May 10, 1971, the defendants VAN AKEN and HILL would cause opinion letters to be made available to the transfer agent for Elinvest stock for the purpose of inducing said transfer agent to release Elinvest stock to certain of the defendants, co-conspirators and others upon the liquidation of LTMC, in a form which would allow the immediate sale of said Elinvest stock to the public. On or about May 10, 1971, in exchange for the LTMC stock owned or controlled by the defendants VAN AKEN, HILL, certain co-conspirators and others, the transfer agent for Elinvest stock would issue Elinvest stock to the said defendants, co-conspirators and others in a form which would allow the immediate sale of said Elinvest stock to the public.

(d) Defendants BARON, BLITZ, DREW, GERSTENZANG, HILL, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO and VAN AKEN would manipulate, and inflate the price of Elinvest stock by artificial means, including but not limited to the following:

(i) The defendant B. ROSS, in his capacity as a trader for M. S. Wien and Co., Inc., and co-conspirator

INDICTMENT

Mark E. Ross fraudulently would cause that brokerage firm to buy tens of thousands of shares of Elinvest stock in the public market.

(ii) The defendant ROSAN would fraudulently sell Elinvest stock owned and controlled by the defendant VAN AKEN and co-conspirators John Bradley and Enoch Van Aken and others as and when directed by the defendant VAN AKEN through R. J. Rosan and Co., Inc., in return for (1) the right to purchase for himself Elinvest stock at a reduced price, and (2) the brokerage commissions the defendant ROSAN would receive for completing these transactions.

(iii) The defendant BLITZ, in return for a \$25,000 bribe, fraudulently would cause the Astron Fund, Inc., to purchase Elinvest stock through the defendant ROSAN's brokerage firm at artificially inflated prices.

(iv) The defendant ROSENTHAL, for a \$50,000 bribe, fraudulently would induce people to purchase Elinvest stock through the defendant ROSAN's brokerage firm at artificially inflated prices.

(v) The defendants BARON and HORVAT, fraudulently would induce customers of Baron and Co., Inc., to purchase Elinvest stock at artificially inflated prices.

(vi) The defendants ORPHEUS, DREW, SANTINI, McLEOD and GERSTANZANG and others, in return for an undisclosed fee, would cause the defendant McLEOD's



INDICTMENT

brokerage firm to purchase Elinvest stock from individuals and other brokerage firms in the public market and would, by fraud and by threat, induce members of the public to buy Elinvest stock.

(e) By the means set forth above and others, the defendants BARON, BLITZ, DREW, GERSTENZANG, HILL, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO, and VAN AKEN would engage in a scheme to unlawfully obtain thousands of dollars by controlling the available supply of Elinvest stock and creating the false impression of increased investor demand for Elinvest stock in the public market, artificially inflating the price of Elinvest stock and defrauding members of the investing public of hundreds of thousands of dollars.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the defendants and co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

1. On or about May 26, 1971, the defendant BARON made false and misleading statements of material facts in a telephone conversation with a customer, for the purpose of inducing said customer to purchase Elinvest stock.

2. On or about June 18, 1971, in the Southern District of New York, the defendant BLITZ received a \$25,000 bribe for causing his employer, the Astron Fund, Inc., to purchase 25,000 shares of Elinvest stock at \$5.00 per share.

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3. On or about June 29, 1971, in the Southern District of New York, the defendant ROSAN caused his brokerage firm to sell Elinvest stock controlled by the defendant VAN AKEN to buyers supplied by the defendant ROSENTHAL.

4. On about July 8, 1971, in the Southern District of New York, the defendant ROSENTHAL received a \$50,000 payoff for causing two individuals to purchase 25,000 shares of Elinvest stock at \$4.00 per share through the defendant ROSAN's brokerage firm.

5. On or about July 8, 1971, the defendant HORVAT made false and misleading statements of material facts in a conversation with a customer for the purpose of inducing said customer to purchase Elinvest stock.

6. In or about June and July, 1971, in the Southern District of New York, the defendant DREW threatened a securities salesman with bodily injury.

7. On or about July 19, 1971, in the Southern District of New York, the defendant ORPHEUS made false and misleading statements in a telephone conversation with a customer for the purpose of inducing said customer to purchase Elinvest stock.

8. In or about mid-July, 1971, in the Southern District of New York, the defendants KADISON, B. ROSS and TURCO traveled from New Jersey to New York for the purpose of forcing the defendant VAN AKEN to pay monies under threat of physical harm in connection with certain transactions in Elinvest stock.

Each of the mailings of confirmations set forth in Counts



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14 through 18 of this indictment are alleged herein as overt acts in furtherance of the conspiracy.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH SIX

The Grand Jury further charges:

1. On or about the dates set forth in Counts Two through Six below, in the Southern District of New York and elsewhere, the defendants BARON, BLITZ, DREW, GERSTENZANG, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO, and VAN AKEN, unlawfully, wilfully and knowingly, directly and indirectly, in the offer and sale of securities, namely Elinvest stock, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, did:

- (a) employ devices, schemes and artifices to defraud;
- (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon purchasers of said securities.

2. The allegations contained in paragraph 5 of Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which the defendants BARON, BLITZ, DREW, GERSTENZANG, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI,

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TURCO and VAN AKEN committed the offenses charged in paragraph I of these counts.

3. On or about the dates hereinafter set forth in Counts Two through Six, in the Southern District of New York, the defendants BARON, BLITZ, DREW, GERSTENZANG, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO and VAN AKEN, unlawfully, wilfully and knowingly, directly and indirectly, did use and cause to be used means and instruments of transportation and communication in interstate commerce and the mails pursuant to and in furtherance of the offenses alleged in paragraph 1 of these counts in connection with sales of Elinvest stock to purchases as set forth below:

<u>COUNT</u>	<u>DATE</u>	<u>PURCHASER</u>	<u>SHARES PURCHASED</u>
2	5/26/71	David Kauffman	1,000
3	6/30/71	Lenore Braunfeld	100
4	6/30/71	Arthur Hale	100
5	7/1/71	Leslie Dean Willeford	1,000
6	7/19/71	Leslie Dean Willeford	1,000

(Title 15, United States Code, Sections 77q(a) and 77x; Title 18, United States Code, Section 2.)

COUNTS SEVEN THROUGH THIRTEEN

The Grand Jury further charges:

1. On or about the dates set forth in Count Seven through Thirteen below, in the Southern District of New York and elsewhere, the defendants BARON, BLITZ, DREW, GERSTENZANG, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI,



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TURCO and VAN AKEN, unlawfully, wilfully and knowingly directly and indirectly, by use of means and instrumentalities of interstate commerce and of the mails, in connection with the purchase and sale of securities, to wit, Elinvest stock, did: (a) employ devices, schemes and artifices to defraud; (b) make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon purchasers of Elinvest stock.

2. The allegations contained in paragraph 5 of Count One of this indictment are repeated and realleged as though fully set forth herein, as constituting and describing some of the means by which the defendants BARON, BLITZ, DREW, GERSTENZANG, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO, and VAN AKEN committed the offenses charged in paragraph 1 of these counts.

3. On or about the dates hereinafter set forth in Counts Seven through Thirteen, in the Southern District of New York, the defendants BARON, BLITZ, DREW, GERSTENZANG, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO, and VAN AKEN, unlawfully, wilfully and knowingly, directly and indirectly, did use and cause to be used means and instrumentalities of interstate commerce and of the mails pursuant to and in furtherance of the offenses alleged in paragraph 1 of these counts in connection with sales of Elinvest stock to persons as shown below:

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<u>COUNT</u>	<u>DATE</u>	<u>PERSON</u>	<u>SHARES PURCHASED</u>
7	6/4/71	Matthew Peterson	100
8	6/9/71	Astron Fund, Inc.	25,000
9	6/10/71	Eugene Grazianno	100
10	6/11/71	Mike Separ	200
11	6/29/71	H. Barrie Morrison	15,000
12	6/29/71	Charles Berlin	10,000
13	7/8/71	Archibald W. Denny, Jr.	200

(Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5; Title 18, United States Code, Section 2.)

COUNTS FOURTEEN THROUGH EIGHTEEN

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts Fourteen through Eighteen in the Southern District of New York and elsewhere, the defendants BARON, BLITZ, DREW, GERSTENZANG, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO and VAN AKEN, unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud purchasers of the stock of Elinvest and to obtain money and property from said persons by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, and did cause to be delivered by mail according to the directions thereon certain matter hereinafter described in Counts Fourteen through Eighteen to be sent and delivered by



INDICTMENT

the Post Office Department.

2. The allegations contained in paragraph 5 of Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which the defendants BARON, BLITZ, DREW, GERSTENZANG, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO and VAN AKEN committed the offenses charged in paragraph one of these counts.

3. On or about the dates hereinafter set forth in Counts Fourteen through Eighteen in the Southern District of New York and elsewhere, the defendants BARON, BLITZ, DREW, GERSTENZANG, HORVAT, KADISON, McLEOD, ORPHEUS, ROSAN, ROSENTHAL, B. ROSS, SANTINI, TURCO, and VAN AKEN, unlawfully, wilfully, and knowingly did place and cause to be placed in post offices and authorized depositories for mail and did cause to be delivered by mail, according to the directions thereon, to the persons hereinafter set forth, the matter hereinafter set forth:

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>	<u>MATTER</u>
14	5/26/71	David Kauffman 211 W. 51 Street Apt. PHR New York, N.Y. 10022	Confirmation of the purchase of shares of Elinvest stock.
15	6/9/71	Astron Fund c/o Frank Russell Co. 1200 Washington Bldg Tacoma, Washington 98402 Att'n: Mr. Blitz	Confirmation of the purchase of shares of Elinvest stock.
16	6/29/71	H. Barrie Morrison c/o Mitchell Morrison, Inc. 720 Fifth Avenue New York, New York	Confirmation of the purchase of shares of Elinvest stock.

INDICTMENT

- |    |         |  |   |
|----|---------|--|---|
| 17 | 6/29/71 | Charles Berlin<br>103-B Kingston Terrace<br>R.D. #4<br>Princeton, New Jersey | Confirmation of the<br>purchase of shares of<br>Elinvest stock. |
| 18 | 6/30/71 | Lenore Braunfeld<br>12 E. Central Ave.<br>Pearl River, N.Y.<br>10965         | Confirmation of the<br>purchase of shares of<br>Elinvest stock. |

(Title 18, United States Code, Sections 1341 and 2)

COUNT NINETEEN

The Grand Jury further charges:

On or about June 18, 1971, in the Southern District of New York, ERIC BLITZ, the defendant, a person affiliated with the Astron Fund, Inc., a registered investment company, acting as agent for said registered company, unlawfully, wilfully and knowingly did accept compensation from a source other than a regular salary or wages from the said Astron Fund, Inc., in the amount of \$25,000 for the purchase of property, namely, shares of Elinvest stock, for said Astron Fund, Inc., which compensation was not accepted in the course of business of the defendant ERIC BLITZ, as an underwriter or broker.

(Title 15, United States Code, Sections 80a-17(e)(1) and 80-a-48)

COUNT TWENTY

The Grand Jury further charges:

In or about mid-July, 1971, in the Southern District of New York, FRANK KADISON, BARRY ROSS and ROBERT TURCO, the defendants, unlawfully, wilfully, and knowingly, did travel in interstate commerce, between the State of New Jersey and the State of New York, with intent to carry on and facilitate the



INDICTMENT

carrying on of an unlawful activity, namely extortion and extortionate larceny in violation of the New York State Penal Law Sections 155.05, 155.30, and 155.40 and thereafter did perform and attempt to perform a carrying on of said unlawful activity and a facilitation of the carrying on of said unlawful activity and a distribution of the proceeds of said unlawful activity.

(Title 18, United States Code, Sections 1952 and 2).

COUNT TWENTY-ONE

The Grand Jury further charges:

1. On or about May 2, 1973, in the Southern District of New York, PETER HORVAT, the defendant, having taken an oath that he would testify truthfully before a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York and including for that District, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations to said Grand Jury.

2. At the time and place aforesaid, the said Grand Jury was conducting an investigation into possible violations of United States laws, including among others, laws prohibiting conspiracy to commit any offense against the United States (Title 18, United States Code, Section 371), fraud in the interstate offer and sale of securities (Title 15, United States Code, Section 77q(a)), use of manipulative and deceptive devices in the purchase and sale of securities (Title 15, United States Code, Section 78j(b) and Rule 10b-5 thereunder), and mail fraud (Title

INDICTMENT

18, United States Code, Section 1341) to determine whether any persons violated such statutes in connection with purchases and sales of the stock of Elinvest.

3. It was material to the said inquiry to ascertain what representations, if any, had been made to members of the investing public in 1971 concerning the desirability of purchasing Elinvest stock which induced them to purchase Elinvest stock.

4. At the time and place aforesaid, PETER HORVAT, the defendant, appearing as a witness under oath before said Grand Jury, unlawfully, wilfully and knowingly, and contrary to said oath, did testify falsely with respect to the aforesaid material matter as follows:

Q. Did you give them any price projections?

A. No, I didn't.

Q. So you would not have told anybody, for example, stock will be trading at \$8 in six months?

A. I never said that.

Q. Or any amount of money at any particular time?

A. No, I make it a practice never to project specific prices.

5. The aforesaid testimony of the defendant PETER HORVAT, as he then and there well knew, was untrue.

(Title 18, United States Code, Section 1623)

COUNTS TWENTY-TWO THROUGH TWENTY-FIVE

The Grand Jury further charges:

1. On or about March 1, 1973, in the Southern District of New York, BARRY M. ROSS, the defendant, having taken an oath



INDICTMENT

that he would testify truthfully before a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York and inquiring for that District, unlawfully, wilfully and knowingly and contrary to said oath, did make false material declarations to said Grand Jury.

2. At the time and place aforesaid, the said Grand Jury was conducting an investigation into possible violations of United States laws, including, among others, laws prohibiting conspiracy to commit any offense against the United States (Title 18, United States Code, Section 371), fraud in the interstate offer and sale of securities (Title 15, United States Code, Section 77q(a)), use of manipulative and deceptive devices in the purchase and sale of securities (Title 15, United States Code, Section 78j(b) and Rule 10b-5 thereunder), and mail fraud (Title 18, United States Code, Section 1341) to determine whether any persons violated such statutes in connection with transactions in the stock of Elinvest.

3. It was material to the said inquiry to ascertain the facts and circumstances surrounding any scheme to raise artificially the price of Elinvest stock in the public market place in 1971, and specifically to ascertain, among other things: (a) the names of all individuals who participated in or benefited from said scheme; and, (b) whether any of the participants in said scheme had threatened or caused others to threaten or coerce any person in order to assure that the participant would be

INDICTMENT

compensated for any services performed in furtherance of said scheme or had any knowledge whether such threats had been made.

4. At the time and place aforesaid, BARRY M. ROSS, the defendant, appearing as a witness under oath before said Grand Jury, unlawfully, wilfully and knowingly, and contrary to said oath, did testify falsely with respect to the aforesaid material matters as follows:

COUNT TWENTY-TWO

Q. Were you ever paid anything by anyone to handle Elinvest stock?

A. No.

Q. Have you ever been paid anything by anyone in connection with any transaction involving Elinvest stock other than your ordinary salary?

A. No.

\* \* \*

COUNT TWENTY-THREE

Q. Did anyone ever tell you that they were going to elevate the price of Elinvest stock?

A. No.

\* \* \*

COUNT TWENTY-FOUR

Q. Did you have an arrangement with anyone to purchase Elinvest stock in order to keep the price up?

A. No.

\* \* \*



INDICTMENT

COUNT TWENTY-FIVE

Q. Did you ever speak to George Van Aiken and complain that he was selling Elinvest stock?

A. No.

Q. Did you ever threaten George Van Aiken?

A. No.

Q. Did you ever have anyone threaten George Van Aiken?

A. No.

Q. Did you ever have anyone make threats on your behalf with respect to George Van Aiken's participation in Elinvest?

A. No.

Q. Were you ever present when any threats were made concerning George Van Aiken?

A. No.

9 Q. Were you ever present when any threats were made concerning Elinvest stock?

A. No.

Q. Did you personally make any threats concerning Elinvest stock or concerning George Van Aiken?

A. No.

\* \* \*

Q. Have you ever been present when anyone has threatened anyone concerning the stock deal?

A. No.

Q. Never have?

A. No.

INDICTMENT

5. The aforesaid testimony of the defendant BARRY M. ROSS, as he then and there well knew, was untrue.

(Title 18, United States Code, Section 1623)

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FOREMAN

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PAUL J. CURRAN  
United States Attorney



GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :  
 :  
- v - :  
 :  
ROBIN BARON, et al., :  
 :  
Defendants. :  
-----X

As and for its Bill of Particulars the government states as follows:

A. As to Count One, generally

1. Additional unnamed co-conspirators known to the government at this time are Julius Gladstein and Donald Viggiano.

B. As to Paragraph 5 of Count One

2. With reference to Indictment Paragraph 5(c), the government does not allege that Barry Ross, Eric Blitz or Robin Baron caused opinion letters to be sent.

3. With reference to Indictment Paragraph 5(c), the government does not allege that Barry Ross, Eric Blitz or Robin Baron were issued stock in their names by the transfer agent pursuant to the aforementioned opinion letters.

4. The approximate times of the events alleged in Indictment Paragraphs 5(d)(i) through 5(d)(vi) were as follows:

(a) As to Paragraph 5(d)(i), during the period from approximately May 24, 1971, through approximately August 20, 1971.

(b) As to Paragraph 5(d)(ii), during the period



GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

from approximately March 24, 1971, through approximately October 27, 1971.

(c) As to Paragraph 5(d)(iii), the date in question is approximately June 9, 1971.

(d) As to Paragraph 5(d)(iv), the date in question is approximately June 29, 1971.

(e) As to Paragraph 5(d)(v), during the period from approximately May 13, 1971, through approximately July 30, 1971.

(f) As to Paragraph 5(d)(vi), during the period from approximately June 29, 1971, through approximately August 20, 1971.

5.(a) With reference to Paragraph 5(d)(ii) Rosen fraudulently sold all Elinvest sold out of his firm since he knew the price was being manipulated and since he knew that his sales were pre-arranged and not the result of free-market conditions. Specifically, Rosan fraudulently sold shares for the Van Aken group, out of accounts in the name of John Bradley, Alfreda Van Aken, Melinda Van Aken, Enoch Van Aken, and Alfreda Vechione.

(b) Mr. Rosan's attention is directed to those of his own confirmations copies of which were supplied by him to the government and to the Securities Transaction Questionnaire which he supplied to the government for the particulars admitted therein.

(c) The following "reduced price" purchases were conducted by Rosan.

<u>Date</u>	<u>Amount</u>	<u>Price</u>
4/27/71	700	3 1/2
5/3/71	1000	4
5/17/71	500	4

GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

(d) As to Rosan's brokerage commissions, Mr. Rosan is respectfully referred to his own confirmations copies of which were supplied to the government and his Securities Transaction Questionnaire also supplied to the government.

6. With reference to Indictment Paragraph 5(d)(iii)

(a) The government alleges that Eric Blitz was paid a bribe by check on approximately June 18, 1971, at the Unicorn Restaurant, New York, New York, and that the Astron Fund, Inc., purchased Elinvest stock on a trade date of June 9, 1971.

(b) The Elinvest stock purchased by The Astron Fund through Rosan's firm was 25,000 shares on or about June 9, 1971 at a price of \$5 per share.

7. With reference to Indictment Paragraph 5(d)(iv),

(a) The \$50,000 payment to Rosenthal was in cash on or about July 8, 1971. The money was paid by George Van Aken. Rosan was not present when Rosenthal received the money.

(b) The persons induced to purchase Elinvest by Rosenthal were Charles Berlin and Barrie Morrison. The purchases which totalled 25,000 shares (Morrison-15,000) (Berlin-10,000) were at \$3-15/16 and were confirmed by Rosan as having occurred on June 29, 1971.

8. With reference to Indictment Paragraph 5(d)(v), the government alleges that Robin Baron fraudulently induced purchases of Elinvest stock during the period from approximately June 30, 1971, while working out of his office located at Baron & Co., Inc., One Exchange Place, Jersey City, New Jersey 07302.



GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

C. As to Overt Acts Alleged in Count One

9. With reference to Overt Act No. 1, the government alleges that Robin Baron made false and misleading statements of material facts from his office located at Baron & Co., Inc., One Exchange Place, Jersey City, New Jersey 07302 in a telephone conversation on approximately May 26, 1971, to David Kauffman.

10. With reference to Overt Act No. 2,

(a) The government alleges that Eric Blitz received a \$25,000 bribe at the Unicorn Restaurant, New York, New York.

(b) The firm from whom Astron Fund purchased was R.J. Rosan & Co., Inc.

11. With reference to Overt Act No. 8, the government alleges,

(a) That Kadison Ross and Turco travelled by car to a pre-arranged meeting with Van Aken at Neary's Pub, New York, New York and

(b) That during the period from approximately July 15, 1971, through approximately July 27, 1971, the defendants Barry Ross, Frank Kadison and Robert Turco, sought to obtain cash from George Van Aken. George Van Aken was threatened directly by Ross by telephone and by Turco, acting for Ross and Kadison, in person at Neary's Pub, New York, New York and at Apartment 31-D, 400 East 56th Street, New York, New York. Present when threats were made to the extent known by the government at Neary's, were Barry Ross, Robert Turco, Frank Kadison, George Van Aken, Sonny Santini, Donald Viggiano, Richard Orpheus, John Bradley and



GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

Enoch Van Aken. And at the apartment were Barry Ross, Robert Turco, Frank Kadison, George Van Aken, Sonny Santini, Donald Viggiano, Richard Orpheus, John Bradley and Enoch Van Aken.

D. As to Counts 2 through 6

12. With reference to Indictment Counts 2 through 6, the government alleges that Barry Ross, Eric Blitz and Robin Baron are liable on three grounds: as principals, aiders and abettors, and as members of the conspiracy.

13. With reference to Indictment Counts 2 through 6, the government alleges that the following were the brokers which, as principal or as agent, sold Elinvest stock to the purchasers enumerated in these Counts:

- (a) Count 2: Baron & Co., Inc.
- (b) Count 3: Ridgway McLeod & Associates
- (c) Count 4: Ridgway McLeod & Associates
- (d) Count 5: Ridgway McLeod & Associates
- (e) Count 6: Ridgway McLeod & Associates

E. As to Counts 7 through 13

14. With reference to Indictment Counts 7 through 13, the government alleges that Barry Ross, Eric Blitz and Robin Baron are liable on three grounds: as principals aiders and abettors, and members of the conspiracy.

15. With reference to Indictment Counts 7 through 13, the government alleges that the following were the brokers which, as principal or as agent, sold Elinvest stock to the persons enumerated in these counts:

GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

- (a) Count 7: Baron & Co., Inc.
- (b) Count 8: R.J. Rosan & Co., Inc.
- (c) Count 9: Baron & Co., Inc.
- (d) Count 10: Baron & Co., Inc.
- (e) Count 11: R.J. Rosan & Co., Inc.
- (f) Count 12: R.J. Rosan & Co., Inc.
- (g) Count 13: Baron & Co., Inc.

F. As to Counts 14 through 18

16. With reference to Indictment Counts 14 through 18, the government alleges that Barry Ross, Eric Blitz and Robin Baron are liable on three grounds: as principals, aiders and abettors and members of the conspiracy.

17. With reference to Indictment Counts 14 through 18, the government herewith furnishes, by attachments 14 through 18, copies of the confirmation slips pertaining to these Counts.

G. As to Count 19

18. With reference to Indictment Count 19, the compensation was in the form of a check a copy of which is annexed as attachment 19.

19. With reference to Indictment Count 19, the compensation was given to Eric Blitz by George Van Aken, at the Unicorn Restaurant, New York, New York on June 18, 1971.

H. As to Count 20

20. The defendants Frank Kadison, Barry Ross and Robert Turco travelled by car to a prearranged meeting with George Van Aken at Neary's Pub, New York, New York.



GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

21. Robert Turco and Barry Ross actually met George Van Aken at Neary's Pub at which time on behalf of Kadison, Ross and Turco, Turco threatened Van Aken in order to obtain approximately \$12,500 in cash following certain transactions in Elinvest by Mark Scott Securities where Kadison and Turco worked.

22. Barry Ross, Frank Kadison and Robert Turco are charged both as principals and as aiders and abettors in Count 20.

23. On about July 27, 1971 Van Aken delivered approximately \$12,500 in cash to Robert Turco at Neary's Pub in New York, New York.

H. As to Count 22

24. With reference to Indictment Count 21, the government alleges the following:

- (a) The person making payment was George Van Aken;
- (b) The amount of payment was approximately \$12,500;
- (c) The place of payment was Neary's Pub, New York, New York;
- (d) The payment was made directly to Robert Turco and indirectly to Barry Ross and Frank Kadison.

I. As to Count 23

25. With reference to Indictment Count 22, the government alleges the following:

- (a) The speaker was Mark Ross;
- (b) The statement was made sometime during the period from approximately May 18, 1971, through approximately

GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

July 1, 1971;

(c) The place in which the statement was made is unknown.

J. As to Count 24

26. With reference to Indictment Count 23, the government alleges the following:

(a) The arrangement was between all defendants and co-conspirators;

(b) Barry Ross had knowledge that at least the following persons were parties to the arrangement: William McLeod; Richard G. Orpheus; Robert J. Rosan; Barry M. Ross; John J. Santiago, a/k/a Sonny Santini, Mark E. Ross; Donald Viggiano, Frank Kadison, Robert Turco, John Bradley and Enoch Van Aken.

(c) The arrangement commenced on approximately April 1, 1971;

(d) Barry Ross participated in the arrangement commencing on approximately May 18, 1971 and terminated his participation on approximately August 20, 1971.

K. As to Count 25

27. With reference to Indictment Count 24, the government alleges the following:

(a) All of the nine answers set forth in this Count are false;

(b) George Van Aken was threatened on the telephone and in person at Neary's Pub, New York, New York and at Apartment 31-D, 400 East 56th Street, New York, New York during



GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

the period from approximately July 15, 1971, through July 27, 1971;

(c) The person who threatened was Barry Ross, and Robert Turco, and, indirectly, Frank Kadison;

(d) The threats were in person and over the telephone;

(e) The persons present when the threats were made, to the extent known by the government, were at Neary's Pub Barry Ross, Robert Turco, George Van Aken, John Bradley, and Enoch Van Aken and at the apartment Barry Ross, Robert Turco, Frank Kadison, George Van Aken, Sonny Santini, Donald Viggiano, Richard Orpheus, John Bradley, and Enoch Van Aken.

L. As to Threats by William Drew

28. With reference to Overt Act No. 6,

(a) The defendant Drew threatened the securities salesman by stating in substance that he would physically hit the salesman if the latter did not purchase or arrange for purchases in Elinvest,

(b) The conversation was over the telephone and the salesman and Drew were the only parties thereto,

(c) Both ends of the conversation are believed to have been in Manhattan,

(d) The government believes that Drew, who initiated the call was at the Van Aken apartment 400 E. 56th St. in Manhattan.

(e) The government is not presently aware of the

GOVERNMENT'S BILL OF PARTICULARS TO SUPERSEDING INDICTMENT

precise date of the call beyond that it was made in June or July, 1971.

29. During the period - June/July 1971, while Drew was at the Van Aken apartment he threatened, directly and in person, one or more co-conspirators with physical harm if they failed to sell Elinvest.

Respectfully submitted,

PAUL J. CURRAN  
United States Attorney

By: \_\_\_\_\_  
JOHN M. WALKER, JR.  
Assistant United States Attorney



DEFENDANT BLITZ' PRE-TRIAL MOTION FOR SEVERANCE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

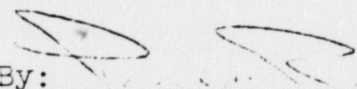
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:  
UNITED STATES OF AMERICA, :  
:  
- v - : MOTION FOR SEVERANCE  
:  
ERIC BLITZ, ET AL., : 74 Cr. 798 (DBB)  
Defendants. :  
-----

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Paul K. Rooney, Esq., sworn to on the 19th day of December 1974, the defendant Eric Blitz will move this Court on the of January 1975 at 9:30 o'clock of that day, or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 14, Federal Rules of Criminal Procedure, directing a severance of his case from that of the twelve co-defendants named in the above indictment, together with such other and further relief as to the Court may seem just and proper.

Yours, etc.,

ROONEY & EVANS

By:   
A Member of the Firm  
521 Fifth Avenue  
New York, New York 10017

Dated: New York, New York  
December 19, 1974

TO: HON. PAUL J. CURRAN  
United States Attorney  
United States Courthouse  
Foley Square  
New York, New York 10007

DEFENDANT BLITZ' PRE-TRIAL MOTION FOR SEVERANCE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- v -

ERIC BLITZ, et al.,

Defendants.

:

:

:

:

:

AFFIDAVIT

74 Cr. 798 (DBB)

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STATE OF NEW YORK )  
COUNTY OF NEW YORK )

ss.:

Paul K. Rooney, Esq., being duly sworn, deposes and says:

1. I am a member of the firm of Rooney & Evans, attorneys for defendant Eric Blitz, and submit this affidavit in support of the within motion for a severance pursuant to Rule 14, Federal Rules of Criminal Procedure.

2. Defendant Blitz is 34 years old, married, with three children, and is a resident of Tacoma, Washington. He is a graduate of Stanford University (B.A., 1961; M.B.A., 1963). Until April 1973 he was employed as a financial consultant by the Astron Fund, a small mutual fund in Tacoma. His salary was \$36,000.00 per year.

3. In March 1973, over a year and a half ago, Mr. Blitz' life was shattered as the result of being subpoenaed to the grand



DEFENDANT BLITZ' PRE-TRIAL MOTION FOR SEVERANCE

jury in this district by the Organized Crime Task Force. He appeared before the grand jury and was questioned about a stock by the name of "Elinvest". Although he was not indicted in this investigation until August 1974, he was forced by the Astron Fund directors to resign his position in April 1973 because of the investigation. He was subsequently unemployed for the better part of a year.

4. In December 1973 defendant Blitz and six co-defendants were indicted for their alleged dealings in a stock by the name of "Acrite". In May 1974 defendant Blitz moved for a severance. He contended that the sole charge against him was his alleged acceptance of a \$10,000.00 payment from co-conspirator George Van Aiken to induce him (Blitz) to have the Astron Fund purchase 23,000 shares of "Acrite" stock. His motion for a severance was granted and on June 14, 1974, after a three day trial, he was acquitted by a jury of all charges against him.

5. Then, two months later, in August 1974, defendant Blitz and twelve co-defendants were indicted for their alleged dealings in "Elinvest" stock. Defendant Blitz pleaded not guilty on September 24, 1974 and has been awaiting trial since that time.

6. In essence, the "Elinvest" indictment charges the thirteen defendants with conspiring to defraud purchasers of "Elinvest" securities. While defendant Blitz is named in nineteen counts of the indictment, the only "real" charge is contained in Count 19.

DEFENDANT BLITZ' PRE-TRIAL MOTION FOR SEVERANCE

This charge against defendant Blitz concerns his alleged acceptance of a \$25,000.00 payment from co-conspirator George Van Aiken to induce defendant Blitz to have the Astron Fund purchase 25,000 shares of "Elinvest" stock. Although several overt acts are alleged, defendant Blitz is named in but one--Overt Act #2. Moreover, there is no visible connection between defendant Blitz and any of the other co-conspirators. Indeed, investigation has revealed that defendant Blitz is virtually unknown to the other defendants and co-conspirators, with the exception of co-conspirators George Van Aiken and Peter Rosenthal.

7. The fact of the matter is that the allegation against defendant Blitz involves no conspiracy. By everyone's admission --including the government's--defendant Blitz was not involved in any way with the other co-defendants, save co-conspirators Van Aiken and Rosenthal. This is confirmed by the government's Bill of Particulars in which the government has set forth details only alleging that defendant Blitz received this money in form of a check from George Van Aiken at the Unicorn Restaurant on June 18, 1971. (Defendant Blitz has consistently maintained that the \$25,000.00 was a loan from Van Aiken's father-in-law, John Bradley. The check, a copy of which is annexed as Exhibit A, is signed by John Bradley. Moreover, there is no doubt--and the government is fully aware of the fact--that the \$25,000.00 plus interest was repaid.)



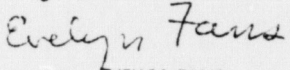
DEFENDANT BLITZ' PRE-TRIAL MOTION FOR SEVERANCE

8. For defendant Blitz to undergo a trial lasting three weeks or more in this district--3,000 miles from his home and family--will necessarily result in unwarranted personal, psychological and economic hardship. This is especially true in view of the trial, and expense, which he underwent in June 1974 before this Court. Should the Court grant a severance, it is deponent's estimate that the trial of defendant Blitz would take no more than two or three days. Thus, it is submitted that the Court--in the interest of justice--should grant defendant Blitz a severance and permit him to be tried separately.

WHEREFORE, it is respectfully submitted that the motion for a severance should be granted in all respects.

  
\_\_\_\_\_  
Paul K. Rooney

Sworn to before me this  
19th day of December 1974.

  
EVELYN FANS  
Notary Public, State of New York  
No. 41-1158768  
Qualified in Queens County  
Commission Expires March 30, 1975





SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF DEFENDANT BLITZ'  
SEVERANCE MOTION

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	SUPPLEMENTAL AFFIDAVIT
- v -	:	IN SUPPORT OF MOTION
	:	<u>FOR SEVERANCE.</u>
ERIC BLITZ, et al.,	:	74 Cr. 1226 (DBB)
Defendants.	:	
-----		

STATE OF NEW YORK    }  
COUNTY OF NEW YORK } ss.:

PAUL K. ROONEY, ESQ., being duly sworn, deposes and says:

1. I am a member of the firm of Rooney & Evans, attorneys for defendant Eric Blitz, and submit this affidavit in support of the within motion for a severance pursuant to Rule 14, Federal Rules of Criminal Procedure.

2. On January 7, 1975 deponent received a copy of superseding indictment #74 Cr. 1226, filed on December 31, 1974. This indictment appears to be similar to that of the superseded indictment, 74 Cr. 798, except for the addition of two co-defendants, Frank Kadison and Robert Turco.

3. A copy of the new indictment was accompanied by a Bill of Particulars. This Bill and the indictment detail a scheme of

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF DEFENDANT BLITZ'  
SEVERANCE MOTION

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manipulation of a stock by the name of "Elinvest". It is alleged under "Means of the Conspiracy" (p. 5) that the conspirators carried out the conspiracy in three ways. First, defendants Van Aiken and Hill and co-conspirators Woo and Rambusch converted a private company ("LTMC") for public trading by combining LTMC with Elinvest. Second, defendants Van Aiken and Hill caused opinion letters to be made available to the transfer agent to release Elinvest stock to certain of the defendants in a form which would allow the immediate sale of Elinvest stock to the public. Third, all defendants manipulated the price of Elinvest stock by artificial means.

4. The government must concede that defendant Blitz had nothing to do with the first means, to wit, the "LTMC" endeavor. With respect to the second means, the government in its recent Bill of Particulars has conceded that defendant Blitz neither caused opinion letters to be sent nor received stock in his own name from the transfer agent (p. 1 ¶¶ 2,3). Thus, the only "means" which would apply to defendant Blitz is the third one, to wit, the manipulation. However, in United States v. Blitz, 73 Cr. 1083, on June 11, 1974, George Van Aiken, the principle witness for the government, said that defendant Blitz never knew of any of the stock manipulations in which Van Aiken was involved. Van Aiken testified at pages 121-22 as follows:



SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF DEFENDANT BLITZ'  
SEVERANCE MOTION

"Q. But your testimony is that Eric Blitz didn't know about that manipulation?

A. My testimony is that he did not know about that manipulation.

Q. Or any other manipulation.

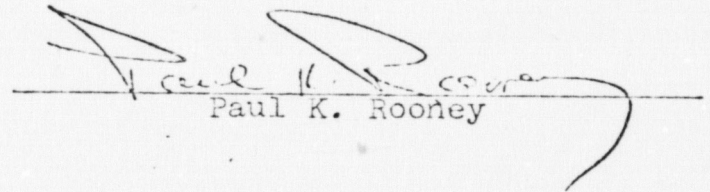
A. I couldn't testify to any other manipulations he didn't know about. I can only testify that he didn't know about this one.

THE COURT: Did he know about any manipulations where you knew about the manipulations?

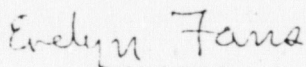
THE WITNESS: No, sir."

5. For the foregoing reasons and for the reasons set forth in defendant's affidavit, dated December 19, 1974, in support of the motion for a severance, it is submitted that the Court should grant defendant Blitz' motion for a severance.

WHEREFORE, it is respectfully submitted that the motion for a severance should be granted in all respects.

  
Paul K. Rooney

Sworn to before me this  
8th day of January, 1975.

  
EVELYN FANE  
Notary Public, State of New York  
No. 41-1156768  
Qualified in Queens County  
Commission Expires March 30 1975

EXCERPT FROM TRANSCRIPT OF CONFERENCE ON PRE-TRIAL MOTIONS, JAN. 9, 1975

1 mcs

12

2 documents. You better see what they have got and then  
3 come back and see what you need that you haven't got.  
4 Maybe he will give it to you.

5 MR. BRODSKY: Okay.

6 THE COURT: I think it is better to do that.

7 MR. BRODSKY: Just for the record, I have no  
8 objection to doing that. Just for the record, your Honor,  
9 I just want to notify the Court that Mr. Walker and I have  
10 not been able to agree on particulars. I do have many  
11 outstanding demands which I think I need before I go to  
12 trial which have not yet been supplied. I also have my  
13 motion for a suppression --

14 THE COURT: I said any motions to suppress will  
15 take place at the beginning of the trial.

16 MR. BRODSKY: It is an open motion.

17 THE COURT: Mr. Rooney.

18 MR. ROONEY: I represent Mr. Blitz, your Honor.  
19 I filed a supplementary affidavit in support of the motion  
20 for a severance which I filed in mid-December. I gave a  
21 copy to Mr. Walker this morning. I handed up a copy to  
22 the Court.

23 Your Honor, Mr. Blitz, I think it is fair to say,  
24 and I think the Government should concede, was not part of  
25 this conspiracy. As I outlined in my supplemental



EXCERPT FROM TRANSCRIPT OF CONFERENCE ON PRE-TRIAL MOTIONS, JAN. 9, 1975

1 mcs

13

2 affidavit, in the first trial Blitz was tried alone.

3 He was granted a severance.

4 George Van Aken testified, when he was asked  
5 by you, "Did Blitz know of any manipulations where you" --  
6 Van Aken -- "knew about the manipulations?"

7 That was at a time when Van Aken was describing  
8 all the manipulations in which he was involved. Van Aken's  
9 answer was "No."

10 The charge in this case is quite simple.  
11 The Government has alleged that Blitz received a \$25,000  
12 payoff, pure and simple. It is all contained in Count 19  
13 in the indictment. That is what this case is all about.  
14 He knows none of these other people, virtually. He did  
15 know Peter Rosenthal and George Van Aken. The other  
16 people are just unknown to him.

17 This is very similar to the first motion for a  
18 severance, the motion in the Acrite case.

19 MR. WALKER: The conspiracy charge here is not  
20 simply that there was a manipulation. It is the fraudu-  
21 lent sale of stock and in this situation where Blitz is  
22 charged with receiving a payoff from Van Aken to fraudu-  
23 lently sell the stock to the Astran Fund, and he is also  
24 aware of and knows Rosenthal and he knows Van Aken and he  
25 had dealings with Van Aken and got a payoff to sell the

EXCERPT FROM TRANSCRIPT OF CONFERENCE ON PRE-TRIAL MOTIONS, JAN. 9, 1975

14

1 MCS

2 stock to the Fund, so that the Government feels it is  
3 warranted in charging him with conspiracy to join the  
4 fraudulent sale of this stock, and that is one of the charges  
5 here.

6 There are numerous objects of the conspiracy.  
7 There is mail fraud. There is 10b-5 fraud, and there is  
8 fraudulent sale of stock.

9 THE COURT: Is he charged with 10b-5 or is he  
10 charged with having taken some of the stock of the Fund?

11 MR. WALKER: He is charged with being a member  
12 of the conspiracy, one of the objects of which is to  
13 fraudulently sell the stock.

14 If your Honor would direct your attention to  
15 Paragraph 2 of Count 1, one of the objects of this is to  
16 employ a device, scheme and artifice to defraud in connec-  
17 tion with the offer and sale of securities, and it is also  
18 a 10b-5 violation, the Government would contend, because  
19 it is fraud in connection with the purchase and sale, and  
20 there are also mail fraud charges here which deal with the  
21 Astran Fund. The Astran Fund transactions are integral  
22 to the entire case.

23 Mr. Blitz' involvement is also alleged as an  
24 overt act in furtherance of this conspiracy. It is not  
25 merely whether he knew, actually was told of any particular



EXCERPT FROM TRANSCRIPT OF CONFERENCE ON PRE-TRIAL MOTIONS, JAN. 9, 1975

1 mcs

15

2 manipulation. It is a question of receiving a payoff  
3 and engaging in the fraudulent sale of the stock as part  
4 of a general pattern of fraudulent sale.

5 Also, what Van Aken may say concerning Blitz'  
6 knowledge is a far cry from establishing that Blitz did not  
7 know that one of the objects of this conspiracy was to  
8 fraudulently sell stock. Indeed, it is most regular for  
9 a fund manager to have to take a payoff to sell the stock  
10 and for him to realize that Van Aken has to make a payoff  
11 in order to get the stock sold.

12 I don't want to argue the motion at the close  
13 of the Government's case now, but it seems to me, your Honor,  
14 that there is ample evidence from which the Government will  
15 establish at trial that Blitz' participation in the con-  
16 spiracy, which is a multi-faceted objected conspiracy is  
17 not simply a manipulation. It is a fraudulent sale.

18 THE COURT: That is what bothers me about this  
19 testimony you have about manipulation. As I understand  
20 the Government's theory here it is that this was a fraudulent  
21 sale of stock in violation of the 10b-5; is that right?

22 MR. WALKER: Yes, of 17-A of the 1933 Act.

23 MR. ROONEY: There is no evidence to back that  
24 up, I'll guarantee, in the grand jury minutes. They think  
25 they will have an easier time this way. I know why they

EXCERPT FROM TRANSCRIPT OF CONFERENCE ON PRE-TRIAL MOTIONS, JAN. 9, 1975

1 mcs

16

2 put him in. They told me.

3 MR. WALKER: It is not fair for defense to say  
4 that.

5 MR. ROONEY: You told me that, Mr. Walker.

6 MR. WALKER: You told me a lot of things too.  
7 You told me your client was guilty.

8 MR. ROONEY: The Blitz situation is cut and  
9 dried. In the grand jury minutes he allegedly got a  
10 \$25,000 payoff from Van Aken. There is proof. There  
11 is a check that he paid \$26,750, 25,000 plus interest back  
12 to him. The question is whether it was a bribe. It is  
13 fine to point to the indictment. There is no evidence to  
14 back that up.

15 THE COURT: If it wasn't that, a bribe, of  
16 course there is nothing to it. If it was a bribe, I  
17 suppose the Government's contention is that this was his  
18 role in the conspiracy, I take it.

19 MR. WALKER: That is right.

20 THE COURT: I'm afraid I have got to go along  
21 with that. I'm afraid I've got to deny your motion.  
22 I think they are entitled to that. It is a single con-  
23 spiracy.

24 This is on for the 27th. I'm in Part 1 for  
25 the next two weeks, but the way the thing is shaping up to



EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
19, 1975 (R. 2209-21)

2209

Your Honor, at this point the government rests.

THE COURT: All right, ladies and gentlemen, the government rests, and there are some administrative matters I have to take care of. So we will take a recess at this moment.

(Jury excused.)

MR. ROONEY: Your Honor, pursuant to Rule 29 of the Federal Rules of Criminal Procedure I respectfully move for dismissal of the indictment on the following grounds:

With respect to Count 1, which is the conspiracy count, I submit there is insufficient evidence to connect the defendant Blitz with the conspiracy. There is no evidence to show that the defendant Blitz had any knowledge of the objects of this conspiracy.

In fact, the evidence is just the opposite.

The only witness in this case, your Honor, who speaks about Blitz and the conspiracy is Van Aken. There are six people who mentioned Blitz' name, aside from Dean Alleford - George Russell, Eleanor Parker, and there is Bradley, Van Aken and Rosenthal. Bradley testified that he only knew what Van Aken told him. Aside from that, Bradley doesn't know what went on with Blitz, had no knowledge aside from being a chauffeur. Rosenthal said he didn't know

EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
19, 1975 (R. 2209-21)

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2210

membr 2

Blitz purchased stock, had no conversation with Blitz at the time in question. The only witness is Van Aken who testified in essence that this \$25,000 was a bribe. That is clear. Van Aken testified that he was the chief mover in this conspiracy, that he controlled the actions not only of himself, but also Bradley and his wife. He said, however, to his knowledge Blitz had no knowledge of the manipulation. So I submit not only there is no evidence to connect with the conspiracy or its objects, but just the opposite. The evidence is that Van Aken was the chief manipulator and that Blitz did not know.

I think what the government is arguing here is that Blitz by having a trust fund purchase the stock helped them move the stock up in price, in other words, Bliss was aiding and abetting the conspiracy. That is clearly insufficient. One cannot have an abettor conspiracy; either one does or does not know. Van Aken testified Blitz did not know. There is insufficient evidence to connect Blitz to the conspiracy.

Also, with respect to the conspiracy and the bill of particulars which defines the conspiracy -- and I am now on page 5 of the indictment under Means -- the government does not allege that Blitz caused an opinion letters to be sent, which seems to knock out paragraphs



EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
19, 1975 (R. 2209-21)

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2211

1  
2 A and B, and also knocks out paragraph C in that the govern-  
3 ment does not allege that Blitz was issued stock in his  
4 own name by the transfer agent.

5 We seem to have somewhat of a bifurcated conspirac  
6 here, which is a little difficult to follow, I submit.  
7 I am not too sure what he is being charged with in view  
8 of this bill of particulars and the dvidence, but I do  
9 submit, your Honor, that there is no evidence whatsoever  
10 to connect him with knowledge of the objects of the  
11 conspiracy.

12 One otherpoint, Van Aken testified in addition  
13 to this conspiracy argument that everything he told Blitz  
14 was the truth -- at page 646 of the record -- about the  
15 company and about the stock. There are a number of counts  
16 in this indictment that I submit should be dismissed,  
17 and I refer to Counts 2 through 6, Count 1 being the con-  
18 spiracy.

19 Counts 2 through 6 charge the defendant Blitz  
20 apparently with aiding and abetting, counselling, that he  
21 helped various people or engaged in various transactions  
22 through the use of the mails, thatcount should be dismissed.

23 Similarly, Counts 7, 9, 10, 11, 12 and 13,  
24 I submit again on this aiding and abetting in the con-  
25 spiracy, there is no evidence whatsoever to connect Blitz with

EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
19, 1975 (R. 2209-21)

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1       membr 4

2212

2       any mailings with respect to Matthew Peterson, Graziano,  
3       Sapar, Morrison, Berlin and Denny.

4               Count 8 does refer to a crime involving a  
5       trust fund and the use of the mails.     However, I submit  
6       on this particular count, Count 8, there is insufficient  
7       evidence for the reasons I have stated so far.

8               Counts 14 to 16 charge Blitz again apparently  
9       on aiding and abetting, counselling with respect to the  
10       use of the mails regarding various people, such as Berlin  
11       and Morrison again and David Kauffman and Lenore Braunfeld.  
12       There is no evidence whatsoever to connect Blitz to these  
13       counts at all.

14              Count 15 does refer to the mailing with respect  
15       to the Astron Fund, a mailing of confirmations.     However,  
16       I submit that in view of the testimony there is no evidence  
17       to connect Blitz to this crime.

18              Count 19, your Honor, obviously is the basis of  
19       this case, which is the allegation that the defendant Blitz  
20       received a \$25,000 bribe, and that alone.     I submit on  
21       this particular count, your Honor, tha it is a matter of  
22       credibility.     But I submit that there is no evidence on the  
23       conspiracy and that this count is improperly joined in  
24       the indictment and that it should be dismissed.

25              With respect to my other points, your Honor,



EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
19, 1975 (R. 2209-21)

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PAGE

2213

2 on the validity of the grand jury extension, we have no  
3 representation from the government.

4 THE COURT: I am not going to determine that.  
5 I think on that issue I want to look at the grand jury  
6 minutes.

7 What I do on these motions is without prejudice  
8 as to that.

9 MR. ROONEY: My point on that is that we are dealing  
10 with either one or two grand juries. All that occurred  
11 in this case with regard to that occurred in 1973. They  
12 had a superseding indictment in 1974, so they either  
13 presented the matter as to the same grand jury or put  
14 it before a new grand jury. We have had no representation  
15 from the government as to that.

16 We have the cases of Fine or Wax against Motley,  
17 a decision of the Circuit Court around January 21st.

18 THE COURT: In this one the Court of Appeals  
19 sustained the extension of the grand jury?

20 MR. ROONEY: They did, but they spoke more to  
21 the issue.

22 Also, your Honor, I would like to make an  
23 appropriate motion to strike the various testimony that  
24 has come in with respect to Mr. Blitz on the ground that  
25 the conspiracy as to him has not been proven.

EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
19, 1975 (R. 2209-21)

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Also, I would also like to strike the testimony because the government has rested now about this obligation to report it to the stock exchange. There is no showing whatsoever that there is any obligation to report to the stock exchange.

Frankly, I don't know whether there is or not, but this came in apparently under the theory that there was some obligation. There is no proof as to that, and I ask that that be stricken, your Honor.

I ask your Honor to examine the evidence in the grand jury as to Blitz which is only given through the witness Van Aken, who was asked leading questions which I submit were improper.

I would also like to move to strike all conversations testified by witnesses here with people who were proven not to be co-conspirators in this case.

That is all I have, your Honor.

THE COURT: Would you like to say anything, Mr. Walker?

MR. WALKER: I will respond briefly.

First of all, with regard to the various motions directed to the indictment based upon the grand jury proceedings, the government takes the position, first of all, that except for motions directed to questions of juris-



EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
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number

2 diction and questions of the sufficiency of the indictment,  
3 that all of these motions are untimely now under Rule 12.  
4 They had to be made pre-trial.

5 MR. ROONEY: I made it pre-trial, just to  
6 respond to that. I made it to you.

7 MR. WALKER: Not all of these motions have been  
8 made pretrial, and to the extent that any have and they  
9 may be timely, so be it. But the bulk of these motions  
10 have not been made pretrial.

11 Secondly, your Honor, we say that all of these  
12 motions were not timely coming, and there is a clear waiver  
13 by starting these proceedings and not raising these  
14 pretrial.

15 Second, despite what every defendant may say,  
16 a double jeopardy would arise in a new indictment.  
17 All these should be handled by post-trial motions, so  
18 the government would have a right to appeal should there  
19 be an adverse ruling. It would be a shame to waste  
20 all of the time and effort we have gone through in this  
21 trial.

22 At that time it would be appropriate for the  
23 Court to consider any questions relating to grand jury  
24 proceedings and so forth, at that time when both sides  
25 can brief the issue.

EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
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2 I would point out for the record that with regard  
3 to the decision by Judge Werker, Judge Pollack yesterday  
4 made a ruling in the case before him based upon the  
5 identical letter or practically identical letter. It was  
6 a letter appointing Mr. Leavitt to the Strike Force,  
7 and he held in favor of the government, and so we have a  
8 conflict between two courts within a day or two.

9 MR. WALES: What is the case?

10 MR. WALKER: United States against Brown.

11 MR. WALES: And the docket number?

12 MR. WALKER: I don't have it.

13 MR. AMOROSO: It is being tried now in  
14 Courtroom 906.

15 MR. WALKER: With regard to Mr. Rooney's motions,  
16 Mr. Rooney has made the motion pretrial that because  
17 Van Aken takes the position that to his knowledge Blitz  
18 did not know of the manipulation aspect of the conspiracy  
19 that therefore the conspiracy count should be dismissed,  
20 the government treated this in argument initially and  
21 we are treated again by pointing the same things we pointed out  
22 at the time before, and that is simply that there are three  
23 objects to this conspiracy: Not only is there a manipulation  
24 object of the conspiracy, but there is an object of  
25 mail fraud and fraud in the sale of securities.



EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
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2                   We do not concede that the manipulation object  
3 of the conspiracy was affected, because it clear that  
4 although Van Aken may not have voiced the manipulation  
5 aspect to Blitz, the circumstantial evidence is crystal  
6 clear that because Blitz took a bribe or a payoff, which is  
7 the evidence of Van Aken, that that is strong evidence  
8 of the fact that the stock was at an artificial level,  
9 because a payoff was necessary as to the stock.

10                   Van Aken would not have made a payoff if the stock  
11 could have been sold on its own merits, but it could not be-  
12 cause it had an artificial level, and that is circumstantial  
13 evidence of manipulation and Blitz' knowledge of the  
14 manipulation.

15                   Apart from that, your Honor, with regard to  
16 Counts 2 through 6 and the other substantive counts,  
17 all defendants have been named in those counts, because it is  
18 the government's position that they were all members of  
19 the conspiracy and being members of the conspiracy they  
20 become liable for the separate, individual and distinct  
21 crimes committed by co-conspirators during the course of the  
22 conspiracy under Pinkerton.

23                   In addition to that, the gravamen of these  
24 other offenses is that there was a scheme to defraud which  
25 each defendant joined in each situation.

EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
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Now, your Honor, with regard to Count 19, Mr. Rooney has misstated what that count charges. That count does not charge Mr. Blitz with a bribe; that count charges Mr. Blitz with receiving compensation.

It is the government's position that Mr Blitz' receipt of the loan under the circumstances in this case even as admitted by Mr. Blitz to Eleanor Palmer, to Russell and to the grand jury constitutes a crime under the statute, and we cite the Deutsch case for that proposition, the appearance of conflict of interest, the creation of a conflict of interest.

THE COURT: Your point is that any receipt of money, however it is found, would be a violation?

MR. WALKER: A receipt of something of value. That is our point.

But as a separate item -- and we are standing by the testimony of the government witnesses with regard to Mr. Blitz' conduct and with regard to the conspiracy count and the other counts -- but Count 19, we submit, is a slightly different animal.

Accordingly, the government would strongly oppose the motionss of the defendant Blitz at this time.

MR. ROONEY: Just so the record is clear, prior to this case I spoke to Mr. Walker about the so-called Fine



EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
19, 1975 (R. 2209-21)

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2219

2 argument. I don't think there is any dispute about that.

3 And I was given a representation it was without  
4 merit because the whole matter had been presented to the  
5 grand jury.

6 I am not saying it is not true, but I don't think  
7 it should be barred. But with respect to the conspiracy,  
8 the government can charge what they may, the evidence is  
9 as it is at this point -- there is nothing to link him  
10 to knowledge of the conspiracy, and he must know of the  
11 conspiracy.

12 In this connection I renew my motion for a  
13 severance, which I think was appropriately made prior to the  
14 trial on these very grounds.

15 I also point out your Honor, that the defendant  
16 Blitz purchased at the going rate, and it is questionable  
17 as to who was defrauded and whether there was any artificially  
18 inflated price as far as he knew.

19 Just so the record is clear on Count 19, I think  
20 what the government is saying is that is a malum prohibitum  
21 section, that as soon as you get the \$25,000, whether it is  
22 a loan or gift or anything, you are guilty.

23 But, obviously, in a criminal case that is not  
24 true; the government has charged Blitz with unlawfully,  
25 wilfully and knowingly. The question in this case is

EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
19, 1975 (R. 2209-21)

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2 whether Blitz criminally intended this money as a  
3 gift or loan or anything to be an inducement to him to  
4 purchase the Elinvest stock. The government has to prove  
5 criminal intent here.

6 That is what this particular count is all about.

7 MR. WALKER: By way of just brief reply to the very  
8 last point Mr. Rooney made, we think that the Deutsch case  
9 does impose very strict standards on fund managers and as  
10 that case states the receipt of compensation is the crime  
11 itself.

12 THE COURT: That was a criminal case?

13 MR. WALKER: That was a criminal case.

14 MR. ROONEY: Yes, but you have to prove criminal  
15 intent.

16 MR. WALKER: Deutsch deals with the issue.

17 THE COURT: Well, Mr. Rooney, I am going to  
18 deny your motion. There is always a problem here on the  
19 evidence. It is a question of credibility of here.

20 And also I will say that at the end of the entire case  
21 I am going to sit down with counsel as to Mr. Blitz, as  
22 to these other counts.

23 The issue is whether there was a scheme and  
24 whether the defendant participated in the scheme. I think  
25 what I may do at that time is to suggest that the indictment



EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
19, 1975 (R. 2209-21)

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1 number

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2 perhaps be re-edited better to indicate and that all these  
3 confirmations and these purchases in these counts can be  
4 considered only if the defendant was involved in such a  
5 scheme.

6 But I think there is a credibility issue here.  
7 I will deny your motion to dismiss as against Mr. Blitz.

8 MR. ROONEY: But there is no evidence that he knew  
9 of the scheme. The evidence is that he didn't, according  
10 to Mr. Van Aken, and he is the only witness against him.

11 THE COURT: I think there is enough here.  
12 I will proceed now to Mr. Wales.

13 MR. WALES: Your Honor, on behalf of the defendant  
14 William Drew we move for a judgment of acquittal. William  
15 Drew was named not only in Count 1, the conspiracy count,  
16 but also Counts 2 through 18, the substantive counts.  
17 And your Honor, of course, will note that William Drew  
18 was apparently in a different posture than the other  
19 defendants in this trial. No one testified that  
20 Drew sold any stock to any customers or had any contacts  
21 with any of the buying or selling brokers or any of the  
22 market makers.

23 Your Honor will recall that William McLeod  
24 testified that Drew did not come to his office during  
25 Elinvest. There is testimony that others were in

EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
26, 1975 (R. 3334-35)

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3334

1  
2 scheme and, B, that the defendant they are considering was  
3 involved in the scheme.

4 MR. DOREMAN: The jury could find several schemes  
5 in here?

6 THE COURT: No.

7 MR. DOREMAN: I guess I am confused on this.

8 THE COURT: You are confused. I think that's  
9 clear. The scheme has got to have one or more objects or  
10 purposes which are stated in the indictment and the jury  
11 doesn't have to find all of them, they have to find at  
12 least one of them. That is the scheme.

13 I think you would agree with that, Mr. Walker?

14 MR. WALKER: Yes, your Honor.

15 MR. ROONEY: Your Honor, just on Blitz, the  
16 conspiracy count is dismissed but you are holding him in  
17 on the scheme aspect?

18 THE COURT: Yes, on the 10b-5 now. I have  
19 taken out the 17(a); holding him on the 10b-5 and I am hold-  
20 ing him on the mail fraud and I am holding him on Count 19,  
21 if that is what it is.

22 MR. ROONEY: I want to renew my motion for a  
23 severance under this.

24 THE COURT: You can renew, I deny it. You have  
25 an exception.



EXCERPTS FROM TRIAL TRANSCRIPT RE MOTIONS FOR SEVERANCE ON FEBRUARY  
26, 1975 (R. 3334-35)

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3335

MR. ROONEY: My argument is improper joinder under Rule 3. I wanted to move to strike the testimony of Dean Willeford that came in under the conspiracy count.

THE COURT: I am going to leave it in.

Gentlemen, I have received enormous number of requests to charge here. One general observation I think on a number of the defendants' charges, and I think you have about 15 or 20, that it is not enough that so and so did so and so. That is not enough. I am not going to charge all those. I am going to charge the jury under the conspiracy count, I am going to charge the elements of the conspiracy, I am going to tell them that mere association is not enough and that kind of thing, they must find that the defendant they are considering knew the objects of the conspiracy and that he wilfully and knowingly participated in it, I am going to tell them that mere association is not enough. I am not going through all these requests that so and so testified, so and so, the defendant did so and so. That is not enough. I am not going to do that.

As to those requests, I am not going to charge them. Of course you have an exception.

MR. BRODSKY: Just respectfully except.

THE COURT: Sure. I will give you a chance when I get through with the charge anyway. I wanted to alert you

*Evelyn King*

For deposit Only  
JUL 13 7  
Act # 38 JUL 10 1961

FEDERAL RESERVE BANK OF NEW YORK  
NEW YORK, N.Y.

JUN 27 1961

JUN 27 1961



GOVERNMENT EXHIBIT 19b: LETTER FROM JOHN BRADLEY TO DEFENDANT BLITZ

USA 33a-475  
(ED. 4-23-71)

EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

6x 19B id

March 9, 1972

Mr. Eric Blitz

Dear Eric:

Since my loan to you dated June 18, 1971 in the amount of \$25,000 I have made repeated attempts to straighten this matter out. It is for your own protection as well as mine that this situation be straightened out immediately. With the tax reason upon us you must realize how important it is to me. I cannot understand why you failed to return my many telephone calls to you. If we do not hear from you by the 15th of March I will be forced to take all the legal means at my disposal to straighten this situation out.

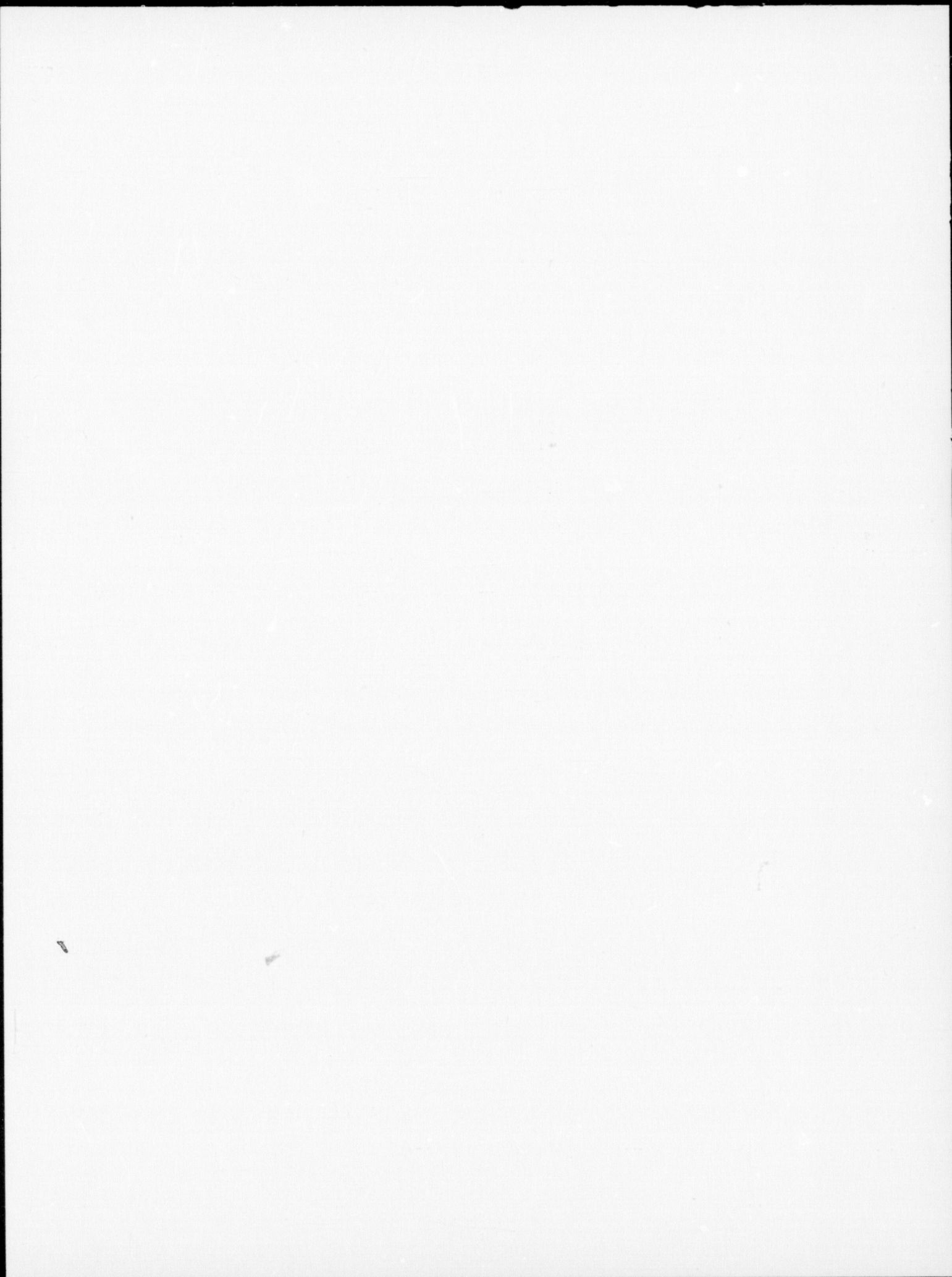
It is not my intent to embarrass you with litigation, so please call and we will straighten this situation out immediately.

Sincerely,

*John Bradley*  
John Bradley

324 Cove Neck Road  
Oyster Bay, New York 11771

Enc.





# JOHN BRADLEY STOCK TRANSACTIONS 1971

	DATE		Selling PRICE	COST	SHORT TERM		LONG TERM	
	PURCHASE	SALE			GAIN	LOSS	GAIN	LOSS
4000 SHS Systems Inc	8-4-71	8-18-71	316450	2164-	100050			
1000 SHS HAT-Redwood Sys Inc	4-13-71	5-6-71	185725	90000	95725			
5000 SHS Amer Comm Sys Inc	8-10-71	8-12-71	836125	4500-	386125			
10000 SHS ELINVEST INC	2-25-71	10-21-71	287125	425225		1381-		
5000 SHS Zwickel Electro Inc	10-6-71	10-7-71	611825	5550-	56825			
17500 SHS ELINVEST INC	1-21-71	MAY 1971	5059925	31325	19219-			
17500 SHS ELINVEST INC	1-21-71	JUNE 1971	174002-	13321425	4078705			
60000 SHS ELINVEST INC	1-21-71	7-8-71	214975	1628580			1421170	
ERIE BLISSON UNCOLLECTIBLE	6-18-70	12-31-71	1146675	1922425	6639380	1321-	1421170	25000
			2220	50000				50000
			27146675	572425	6639380	1321-	1421170	

GOVERNMENT EXHIBIT 21a: LETTER FROM DEFENDANT BLITZ TO JOHN BRADLEYUSA 336-475  
(ED. 4-21-71)EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

6x 21Aid

ERIC T. BLITZ  
1200 Washington Building  
Tacoma, Washington 98402

8/11/72

47

Dear John,

I enclose a check covering the principal and interest due on the note as made. I appreciate very much your continuing patience with my inability to make the loan repayment at an earlier date.

I know how upset you have been over my delay and hope that the lack of funds has not caused any undue hardships.

Thank you again for your consideration.

Best Regards,  
Eric



A-74

DEFENSE EXHIBIT B: CHECK FROM DEFENDANT BLITZ TO JOHN BRADLEY

**PROCESSED**

ERIC T. BLITZ  
1200 WASHINGTON BLDG.  
PHONE BR 2-0327  
TACOMA, WASH. 98402

161

1972 98-297  
1251

DAY TO THE ORDER OF John Bradley

Twenty Six Dollars

WEST SIDE OFFICE  
THURSTON COUNTY BANK  
OLYMPIA, WASHINGTON 98501

MEMO: Philip J. & Linda L. Hill

Eric T. Blitz

⑆1251⑆0297⑆381⑆90996 9⑆

⑆0002675000⑆

DOLLARS

Defense Exhibit B

DEFENDANT BLITZ' SUPPLEMENTAL REQUEST TO CHARGE ON COUNT 19

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA :

- v - :

74 Cr. 1226(s)

ERIC T. BLITZ, :

Defendant. :

-----  
DEFENDANT BLITZ' SUPPLEMENTAL  
REQUEST TO CHARGE.

ROONEY & EVANS  
Attorneys for Defendant Blitz  
521 Fifth Avenue  
New York, New York 10017



DEFENDANT BLITZ' SUPPLEMENTAL REQUEST TO CHARGE ON COUNT 19

REQUEST NO. 11

NECESSARY ELEMENTS WITH  
RESPECT TO COUNT 19

Count 19 of the indictment charges defendant Eric Blitz with violating the Investment Company Act of 1940 by his acceptance of \$25,000 "for the purchase of...Elinvest stock for [the] Astron Fund." (Indictment 74 Cr. 1226S, pp. 12-13.)

As I have already told you (see Government Request to Charge No. 50), the statute upon which this charge is based makes it unlawful for an "affiliated person of a registered investment company" to accept any compensation for purchasing any property for that registered company.

In order to convict defendant Blitz of violating this statute, you must be satisfied beyond a reasonable doubt that defendant Blitz did in fact accept from Van Aken compensation in appreciation of his past or future conduct. Thus, if you find that the \$25,000 check which Blitz received from Van Aken was a loan as defendant Blitz testified rather than an outright payment as Van Aken testified, or if you have a reasonable doubt as to which it was, then you must acquit defendant Blitz of this charge.

Moreover, if you find that the \$25,000 check was not given and accepted in appreciation of Blitz' past or future conduct

DEFENDANT BLITZ' SUPPLEMENTAL REQUEST TO CHARGE ON COUNT 19

with the Astron Fund, but was wholly unrelated thereto or if you have a reasonable doubt as to whether or not it was related thereto, then you must acquit defendant Blitz on Count 19.

Only if you are satisfied beyond a reasonable doubt that the money given by Van Aken to Blitz was compensation and not a loan, and only if you are satisfied beyond a reasonable doubt that this money was given and accepted in appreciation of past or future conduct, can you convict defendant Blitz of the charge contained in Count 19.



GOVERNMENT'S REQUEST TO CHARGE NO. 52 ON COUNT 19

REQUEST NO. 52

Elements of § 17(e)(1)

To find the defendant Elitz guilty of this charge  
you must find beyond a reasonable doubt the following  
elements:

- (1) That he was an affiliated person  
of a registered investment company,
- (2) That, acting as agent for such com-  
pany, he received compensation  
other than from his regular salary,
- (3) That he received the compensation  
for the purchase of property for  
such company,
- (4) That he did this knowingly and  
willfully.

GOVERNMENT'S REQUEST TO CHARGE NO. 54 ON COUNT 19

REQUEST NO. 54

Count 19 - Element Two

The second element you must find is that the defendant Blitz, acting as agent, received compensation other than from his regular salary.

To receive compensation means to receive a "benefit or a thing of value."

United States v. Deutch, 451 F.2d 90, 114 (2d Cir. 1971), cert. denied, 404 U.S. 1019.

"Value" is usually set by the desire to have the "thing" and depends upon the individual and the circumstances.

United States v. Roth, 333 F.2d 450, 453 (2d Cir.), cert. denied, 360 U.S. 942.

An outright payment or even a loan may be found by you to be a thing of value.

United States v. Roth, supra, at 453.

The Government argues that the \$25,000 which went to Blitz was a payoff to Blitz to have him buy Flinvest stock in the name of the Astron Fund. If you find this to be true beyond a reasonable doubt, you may find that the defendant received "compensation." Moreover, even if you find beyond a reasonable doubt that the \$25,000 was only a loan to Blitz, you may still find that it was compensation to Blitz if you determine that he considered it a benefit or a thing of value when you look at all the circumstances involved.



GOVERNMENT'S REQUEST TO CHARGE NO. 54 ON COUNT 19

REQUEST NO. 54 (Cont'd)

-2-

The term "acting as agent" is merely a descriptive phrase distinguishing affiliated persons who are acting as agents from those who are acting as brokers.

United States v. Deutsch, supra, at 111.

GOVERNMENT'S REQUEST TO CHARGE NO. 55 ON COUNT 19

REQUEST NO. 65

Count 19 - Element III

The third element you must find beyond a reasonable doubt is that the defendant Blitz received the compensation for the purchase of property for the Astron Fund.

The Government has argued to you that Blitz was given a \$25,000 fee through the defendant Van Aken in return for which Blitz had the Astron Fund purchase 25,000 shares of Elinvest stock for a total price of \$125,000 from the R. J. Rosen & Co., Inc. Securities Firm.

If you find beyond a reasonable doubt that this is the case, you may find the defendant Blitz guilty of this charge if you are satisfied that all the other elements of the charge have been proven beyond a reasonable doubt.

I also instruct you that you may find the defendant Blitz guilty of this charge if you determine that he received compensation from, or through, Van Aken and knew when he received the compensation that Van Aken had an interest in selling Elinvest Stock, and that the Astron Fund was in a position to purchase this stock. In other words, it is enough if you find that Blitz received any benefit or anything of value, be it gift, bribe or loan, from Van Aken, or through Van Aken, at a time when he (Blitz) knew or realized that Van Aken wanted to have Elinvest stock purchased by individuals or entities.



GOVERNMENT'S REQUEST TO CHARGE NO. 55 ON COUNT 19Charge No. 55 (Cont'd)

-2-

Element III

The offense is completed when the compensation is received. The actual purchase of the stock is not required. Of course, there is no dispute between the parties that the stock was purchased for the Astron Fund through the defendant. "Given the nature of the investment company industry, it would be extremely difficult to prove that the payment of compensation actually caused a particular purchase." Therefore, it is not necessary for you to find, in order to convict, that the purchase of the stock by the Fund was made by Blitz because he received compensation from, or through, Van Aken.

United States v. Deutsch, supra, at 109.

Even if you find that the compensation, if any, that Blitz received was accepted by him as a gratuity or gift from Van Aken in appreciation of some past conduct in connection with his employment, or in anticipation of some future conduct in connection with his employment, you may find him guilty of this charge if you believe beyond a reasonable doubt that all the other elements have been proven.

United States v. Deutsch, supra, at 112-113.

EXCERPTS FROM THE COURT'S CHARGE TO THE JURY

1 UNITED STATES OF AMERICA

2 vs.

Before:

3 HON. DUDLEY B. BONSALE, D.J.,  
and a Jury.

4 ERIC BLITZ, WILLIAM DREW,  
5 et al

74 Cr. 1226

6  
7  
8 New York, March 3, 1975

9  
10  
11  
12  
13  
14  
15 EXCERPT FROM CHARGE OF THE COURT



EXCERPTS FROM THE COURT'S CHARGE TO THE JURY

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2 mailings". It is the mail fraud statute. I have been  
3 over with you about the mailings before.

4 The third element is that the defendant you are  
5 considering was acting knowingly, wilfully and unlawfully  
6 either in participating in the scheme or in aiding and  
7 abetting those who were, if there were any.

8 Here again, as in Counts 7 through 18, the  
9 government is contending, and each of these defendants deny,  
10 that the defendants engaged in a scheme to manipulate or  
11 fraudulently sell Elinvest stock or aided and abetted in it  
12 and that each of these confirmations was sent through the  
13 mails in the ordinary course of business in furtherance of  
14 that scheme.

15 So here again, ladies and gentlemen, consider  
16 the evidence and determine whether you find that the govern-  
17 ment has proved each of these three elements beyond a  
18 reasonable doubt.

19 The last count which you need to consider,  
20 ladies and gentlemen, is Count 19, and that only involves  
21 the defendant Mr. Blitz. This count reads:

22 "The grand jury further charges:

23 "That on or about June 18, 1971 in the Southern  
24 District of New York Eric Blitz, the defendant a person  
25 affiliated with the Astron Fund, Inc., a registered

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EXCERPTS FROM THE COURT'S CHARGE TO THE JURY

mpb-1

3775

Now, this count involves another statute. It is another securities law, ladies and gentlemen, known as the Investment Company and Advisors Act, and this statute provides in pertinent part, "It shall be unlawful for any affiliated person" -- now you remember the evidence that Mr. Blitz was portfolio manager of the Astron Fund and as such he was an affiliated person -- "of a registered investment company" -- and Astron Fund, I don't think there is any dispute, was a registered investment company -- then the statute goes on -- "-- acting as agent, to accept from any source any compensation other than a regular salary or wages from such registered company for the purchase of any property" -- and Elinvest stock, of course, is property -- "for such registered company, the registered company being Astron, except in the course of such person's business as an underwriter or broker."

Now, the purpose of this law, ladies and gentlemen, is to prevent affiliated persons, people who work for mutual funds, from having their judgments affected by conflicts of interest between the interests of the investors whose money they manage -- in this case, the stockholders of the Astron Fund -- and the interests of people desiring to sell securities to the fund, such as the people who were trying to sell Elinvest.

EXCERPTS FROM THE COURT'S CHARGE TO THE JURY

3776

mpb-2

1  
2 In respect to this count there are five elements  
3 which the Government must prove beyond a reasonable doubt  
4 before you may find the defendant Blitz guilty on Count 19.

5 First, that Mr. Blitz was an affiliated person  
6 of a registered investment company. I think there is  
7 no dispute on that.

8 Second, that he acted as an agent for the Astron  
9 Fund -- I don't think there is any dispute on that, either.  
10 He was buying the Elinvest stock for the Astron Fund.

11 Third, that he received compensation other than  
12 his regular salary. Well, of course, compensation is any-  
13 thing of benefit or of value, and here the Government con-  
14 tends that Mr. Blitz received \$25,000 from Mr. Bradley, Van  
15 Aken's father-in-law, as a payoff, which was offered by Van  
16 Aken to induce Blitz to buy this stock for the Astron  
17 Fund.

18 Of course, Blitz denies absolutely that there  
19 was any payoff here at all. He contends that the money  
20 was a loan from Bradley. He does concede he needed money  
21 to help his brother. I think he said he didn't know  
22 that the stock was coming from Bradley, that it was a  
23 totally separate transaction.

24 Fourth, that defendant Blitz accepted com-  
25 pensation in connection with the purchase by Astron Fund



EXCERPTS FROM THE COURT'S CHARGE TO THE JURY

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mpb-3

of the Elinvest shares.

So here the Government must prove to you beyond a reasonable doubt that the payment of the \$25,000 to Blitz by Bradley was in some way connected with the sale of the Elinvest shares to the Astron Fund, and here the Government contends and the defendant Blitz denies that when Blitz took the money he knew that Van Aken was trying to sell the stock to the Astron Fund, and if you find that he did and you find that there was a connection between the payment and the sale of the Elinvest stock, you may find the defendant Blitz guilty under this count, regardless of whether the payment is labeled as a gift or payoff or as a loan, but on the other hand, if you find, as defendant Blitz contends that there was no connection whatsoever between the sale of the Elinvest stock and the payment of the \$25,000 by Bradley to Blitz, then you would find the defendant Blitz not guilty under this count.

And finally, the fifth element, of course, that Blitz, in accepting the payment acted knowingly, wilfully and unlawfully.

You will have observed, ladies and gentlemen, from what I have said so far, that an essential element here in all of these counts is whether the defendant you are considering acted wilfully, knowingly, unlawfully. In

EXCERPTS FROM THE COURT'S CHARGE TO THE JURY

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1 mpb-4

2 other words, did the defendant have the criminal intent  
3 to violate the law as I have reviewed it with you.

4 You will recall, I told you in the conspiracy  
5 count you must find that the defendant knowingly and  
6 wilfully joined the conspiracy, and I told you that in the  
7 remaining counts that the defendant whom you are considering  
8 was acting knowingly, wilfully and unlawfully.

9 How do you determine this criminal intent?

10 Well, of course, an act is done knowingly and  
11 wilfully if it is done voluntarily and purposely. An  
12 act is done wilfully, knowingly and unlawfully if it is  
13 done for the purpose of violating the law in any way. It  
14 is not done wilfully, knowingly and unlawfully if it is done  
15 by mistake or carelessness or for any other innocent reason.

16 It is impossible, of course, to prove exactly  
17 what the defendant you are considering knew or what his  
18 intentions were on these occasions. We can't look into  
19 his mind to see what knowledge he had to determine his  
20 specific intentions. But these are matters which you, the  
21 jury, will determine from a careful consideration of the  
22 facts and circumstances which were brought out in the  
23 evidence.

24 The knowledge and intentions of a defendant  
25 may only be understood when put in context with the



EXCERPTS FROM THE COURT'S CHARGE TO THE JURY

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1 mpb-5

2 circumstances surrounding his acts and the inferences which  
3 you the jury find may reasonably be drawn therefrom.

4           You may ask yourselves whether you find that  
5 these transactions were normal or abnormal, whether you  
6 find the background of the defendant made it likely or  
7 unlikely that he fully understood what he was doing,  
8 whether you think the defendant had a motive, whether you  
9 think he had a financial or other interest in the outcome.  
10 These are the kinds of questions -- and of course not the  
11 only ones -- which you should ask yourselves to determine  
12 the knowledge and intention, indeed, criminal intent, if any,  
13 of a defendant, and I don't suggest any answers to these  
14 questions, ladies and gentlemen.

15           In your own daily lives, you are continually  
16 called upon to use your own common sense and experience to  
17 determine from the actions and statements of others what  
18 their real intentions and purposes are.     Please do the  
19 same thing here in considering the knowledge and intentions  
20 of these defendants.

21           As I recall it, there was some evidence from  
22 VanAken and Rosenthal regarding payments to Blitz in connec-  
23 tion with some other stocks, I think On-Site Energy, Cut-Up  
24 Capers, National Modular Systems, & American Community  
25 Systems, in 1970 and 1971.

EXCERPTS FROM THE COURT'S CHARGE TO THE JURY

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1 mpb-6

2 Now, you may consider this evidence, but  
3 only in considering what Mr. Blitz's knowledge and  
4 intentions were at the time of the Elinvest sale. Defendant  
5 Blitz denies ever having received these other payments.  
6 Do you remember that?

7 He took the stand and denied it. But whether  
8 he accepted these other payments or not, they aren't  
9 included in this indictment. This indictment, includes  
10 only the \$25,000 from Bradley to Blitz.

11 So in considering the evidence of these prior  
12 payments, if you find that Blitz did receive these payments  
13 or any of them, then only consider that evidence in deter-  
14 mining what Blitz' knowledge and intentions were when he  
15 received from Bradley the payment at the time of the Elin-  
16 vest stock, and of course, you won't consider this evidence  
17 regarding these alleged prior payments with respect to  
18 any of the other defendants. You will only consider it  
19 with respect to Mr. Blitz.

20 Then you recall the evidence that the defendant  
21 Blitz wrote Bradley a letter stating that he was repaying  
22 the loan, and there was evidence, or so the Government  
23 contends that there was evidence that at the time that Blitz  
24 knew that the SEC was investigating Elinvest. The Govern-  
25 ment contends and Blitz denies that this evidence indicates



EXCERPTS FROM THE COURT'S CHARGE TO THE JURY

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mpb-7

that Blitz was trying to cover up the \$25,000 payoff, in view of the SEC investigation, and similarly, as I recall it, there was testimony given by the defendants Blitz, Horvat, Orpheus, Rosan, before the Securities and Exchange Commission and before the grand jury -- some of this testimony I believe was read to you during the trial, and the Government is contending, and each of these defendants denies that on these prior occasions they gave false testimony to cover up their participation in the Elinvest venture.

So in reviewing the evidence, ladies and gentlemen, if you find that any of the defendants made false statements during the trial or on these prior occasions, if you should find that, and if you find that they were made to exculpate himself, then you may consider that evidence as circumstantial evidence from which you may infer consciousness of guilt on the part of that defendant.

That again is something you can consider in determining a defendant's criminal intent or his knowledge.

Of course, the evidence of any such prior statements must only be considered by you with respect to the defendant who made the statement. You must not consider it with respect to any of the other defendant.

The law recognizes two types of evidence: Direct

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	:	
	:	
UNITED STATES OF AMERICA,	:	NOTICE OF MOTION FOR A
	:	JUDGMENT OF ACQUITTAL
- v -	:	<u>OR FOR A NEW TRIAL.</u>
	:	
ERIC T. BLITZ,	:	74 Cr. 1226 S (DBB)
	:	
Defendant.	:	
-----	:	

SIR:

PLEASE TAKE NOTICE that, upon the annexed affidavit of PAUL K. ROONEY, ESQ., sworn to on the 10th day of April 1975, the defendant Eric T. Blitz will move this Court, Hon. Dudley B. Bonsal, U.S.D.J., at the United States Courthouse, Foley Square, New York, New York, on the 21st day of April 1975 at 9:30 o'clock of that day, or as soon thereafter as counsel can be heard, for an order, pursuant to Rules 8, 14, 29 and 33, Federal Rules of Criminal Procedure, directing a judgment of acquittal or a severance and a new trial and such other, different and further relief as to the Court may seem just and proper.

Dated: New York, New York  
April 10, 1975

Yours, etc.,

ROONEY & EVANS

By: \_\_\_\_\_  
A Member of the Firm  
521 Fifth Avenue  
New York, New York 10017  
(212) 682-4343

TO: HON. PAUL J. CURRAN  
United States Attorney  
United States Courthouse  
Foley Square  
New York, New York 10007



DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA,

- v -

ERIC T. BLITZ,

Defendant.

AFFIDAVIT

74 Cr. 1226 S

-----  
STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

PAUL K. ROONEY, ESQ., being duly sworn, deposes and says:

1. I am a member of the firm of Rooney & Evans, attorneys for defendant Eric Blitz, and submit this affidavit in support of the within motion for a new trial or a judgment of acquittal, pursuant to Rules 29 and 33, Federal Rules of Criminal Procedure.

2. The trial of this case began on January 27, 1975 against defendant Blitz and four co-defendants. The indictment originally named defendant Blitz in 19 Counts, but before submission of the case to the jury, the Court dismissed Count One (the conspiracy count) against defendant Blitz and Counts Two through Six against all five defendants. On March 4, 1975 defendant Blitz was acquitted on Counts Seven through Thirteen (which charged securities violations) and Counts Fourteen through

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

Eighteen (which charged Mail Fraud violations). He was convicted on Count Nineteen--in which he was named alone--charging a violation of the "Investment Company Act."

The Background of the Prosecution(s)

3. Defendant Blitz was first subpoenaed to testify before the grand jury by the Organized Crime Task Force in March 1973. At that time, he appeared before the grand jury and was questioned about transactions involving Elinvest stock. Upon the advice of counsel, he asserted his constitutional rights and refused to testify. In July 1973, however, we notified the U.S. Attorney that Mr. Blitz did wish to testify before the grand jury, and on July 27, 1973, he appeared and testified fully about his involvement in both the Elinvest and Acrite stocks.

4. In December 1973, defendant Blitz and six co-defendants were indicted--for conspiracy and substantive crimes--for their alleged dealings in connection with Acrite. In the original indictment, defendant Blitz was charged in twenty-five counts most of which arose out of an alleged conspiracy and manipulation scheme. Defendant Blitz moved for a severance, and, without opposition from the government, the motion was granted. After a separate trial on one count (all others having been dropped) in June 1974, defendant Blitz was acquitted. It should be noted that during argument of that severance motion the U.S. Attorney conceded that defendant Blitz was at most merely on the periphery



DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

of the alleged conspiracy. Moreover, at the trial, the government's principal witness, George Van Aken, testified that defendant Blitz was unaware of the Acrite manipulation or any other manipulation in which Van Aken had participated. Van Aken testified on cross examination:

By Mr. Rooney:

"Q. After International Venture purchased the [On Site] stock the stock doubled in price: is that right? Shortly?

A. Yes, sir, it did.

Q. In about two weeks?

A. About that period of time. Two, three weeks.

Q. Was this stock being manipulated?

A. Yes.

Q. But your testimony is that Eric Blitz didn't know about that manipulation?

A. My testimony is that he did not know about that manipulation.

Q. Or any other manipulation?

A. I couldn't testify to any other manipulations he didn't know about. I can only testify that he didn't know about this one.

THE COURT: Did he know about any manipulations where you knew about the manipulations?

THE WITNESS: No, sir." (Transcript pp. 121-122)

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIALThe Basis for the Severance  
Motions in the Instant Case

5. In August 1974 defendant Blitz was again indicted, this time along with twelve co-defendants--for conspiracy and substantive crimes--for alleged dealings in connection with the stock of Elinvest. He moved once again for a severance. But in this case--unlike Acrite--the U.S. Attorney opposed the motion and claimed that defendant Blitz was very much involved in the conspiracy. Specifically, at oral argument on January 9, 1975, A.U.S.A. John Walker told this Court that:

"MR. WALKER: He (Mr. Blitz) is charged with being a member of the conspiracy, one of the objects of which is to fraudulently sell the stock.

If your Honor will direct your attention to Paragraph 2 of Count 1, one of the objects of this is to employ a device, scheme and artifice to defraud in connection with the offer and sale of securities, and it is also a 10b-5 violation, the Government would contend, because it is fraud in connection with the purchase and sale, and there are also mail fraud charges here which deal with the Astron Fund. The Astron Fund transactions are integral to the entire case.

Mr. Blitz' involvement is also alleged as an overt act in furtherance of this conspiracy. It is not merely



DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

whether he knew, actually was told of any particular manipulation. It is a question of receiving a payoff and engaging in the fraudulent sale of the stock as part of a general pattern of fraudulent sale.

Also, what Van Aken may say concerning Blitz' knowledge is a far cry from establishing that Blitz did not know that one of the objects of this conspiracy was to fraudulently sell stock. Indeed, it is most regular for a fund manager to have to take a payoff to sell the stock and for him to realize that Van Aken has to make a payoff in order to get the stock sold.

I don't want to argue the motion at the close of the Government's case now, but it seems to me, your Honor, that there is ample evidence from which the Government will establish at trial that Blitz' participation in the conspiracy, which is a multifaceted objected conspiracy is not simply a manipulation. It is a fraudulent sale." (Emphasis added)

The transcript of the oral argument before this Court on January 9, 1975 is annexed hereto as Exhibit A. As can be seen from the transcript, it was solely upon the government's representation that it could prove that Mr. Blitz was a member of the conspiracy that the motion for a severance was denied. (See p.16)

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

Mr. Blitz was therefore required to go to trial with four co-defendants whom he did not know, and to endure a trial which lasted over five weeks, rather than the three-day trial which would have been required had he been tried alone. Moreover, defendant Blitz suffered substantial prejudice by being tried in this fashion, rather than separately, and may well have been convicted as a result.

6. Defendant Blitz now--once again--moves for a new, separate trial on Count 19 on the ground that his joinder in this indictment was, from the outset, clearly improper, and that he is therefore entitled to a new trial as a matter of law. As will be demonstrated in the Memorandum of Law submitted herewith, joinder of defendants under Rule 8 of the Federal Rules of Criminal Procedure is only proper where the government charges in good faith that the defendants participated "in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." While the courts generally permit the government considerable latitude in this area in order to save the time and expense which would be required by separate trials, the law clearly requires that the government's allegations be based upon a genuine belief that it will be able to sustain the charges upon which the joinder is based. A mere allegation of a conspiracy in the indictment, without more, is insufficient to permit the government to join a defendant with other defendants for trial.



DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

7. In the instant case, as is so frequently true, this Court accepted the government's contention that it would offer evidence of Mr. Blitz' participation in the conspiracy charged in the indictment, and therefore denied the pre-trial motion for a severance. However, under the circumstances, it is difficult to see what basis the government had for believing that it could connect Mr. Blitz to any of the other defendants or to sustain its charge that Mr. Blitz was a member of the conspiracy, without which joinder would have been improper. The government's own witness, George Van Aken, had already testified, under oath, that Mr. Blitz had no knowledge of any manipulation in which Van Aken participated, and the government offered no evidence whatsoever regarding Mr. Blitz' participation in the conspiracy other than Van Aken's testimony. Indeed, during the instant trial, Van Aken once again confirmed what the defense had all along urged: that defendant Blitz had no knowledge of the manipulations. (R. 605-06) And, at the close of the case this Court found that there was insufficient evidence as a matter of law to sustain the conspiracy charge as to defendant Blitz. Thus, it is submitted that, irrespective of any specific prejudice, defendant Blitz is entitled to a separate trial under the provisions of Rule 8(b) because there was no foundation for the indictment's allegation that he participated in the same act or transaction or in the same series of acts or transactions in which the other defendants participated. It was therefore improper to have joined him in this indictment, and a new trial must be granted.

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

8. Even if the court should find, however, that defendant Blitz would only be entitled to a new trial upon a showing of prejudice, such prejudice was clearly evident at the trial. In the first place, the length of the trial alone was prejudicial, since the jury was required to sift out about two or three days of testimony after sitting through five-and-one-half weeks of trial. An enormous amount of evidence was introduced--quite properly--by the government on the conspiracy charge, none of which pertained to defendant Blitz. A chart indicating the testimony relating to Blitz is annexed hereto as Exhibit B. In fact, of the 29 witnesses called by the government on its direct case, only 6 offered any testimony about defendant Blitz. And as can be seen from that chart, the testimony of these witnesses which did relate to Blitz amounted to only some 300 pages of a total of over 2200 pages of testimony on the government's direct case. This, it is submitted, was clearly prejudicial and warrants a new trial.

9. It is no answer to say that the Court and the jury acquitted Blitz on the conspiracy and schemes. The fact is that the effect of all this evidence prejudiced Blitz and obfuscated the single issue that involved him, viz. whether he or Van Aken was telling the truth with respect to Count 19. This comparatively simple matter has always been the sole issue since the inception of this prosecution in March 1973. It was so in Acrite, and was true here. Evidence of threats (against Van Aken by Santini, and by Van Aken against Judge Rogers), of Professor



DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

Duke's involvement or non-involvement in the alleged scheme, of the actual manipulation which was spelled out in considerable detail), of inferences of "gangsterism" and organized crime, etc. had nothing whatever to do with this issue, but all of this evidence was heard by the jury. It simply could not have been properly separated by the jury and must have affected their deliberations.

10. It should be noted that the issue on Count 19 is very similar--in terms of proof--to the issue in the Acrите case against Blitz, and it need not have consumed any more time than it took to try the Acrите case., i.e., about three days. If Blitz is to be convicted, so be it, but aside from his involvement with Van Aken and Peter Rosenthal, which existed mainly while he lived 3000 miles away, Blitz' prior record is totally untarnished. To have convicted him in this fashion--amidst a massive conspiracy of which he had no part--was both unfair and unnecessary. In the interest of justice, the Court should therefore set aside this conviction and try Blitz' case--separately--again.

Issues Relating to the Grand Jury

11. During our preparation for trial and subsequent to the decision of United States v. Fein, 504 F. 2d 1170 (2d Cir. 1974), the defense sought to ascertain from the United States Attorney various facts about the presentation of this case to the grand

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

jury. Specifically, shortly after the return of the instant superceding indictment, on January 13, 1975, I telephoned A.U.S.A. John Walker and asked him whether the grand jury that voted the instant indictment on December 31, 1974 had been extended, and whether, under Fein, a motion with respect to any extension was in order. Mr. Walker replied that all the evidence in the case had been re-presented to the second grand jury which had not been extended. Again, on January 22, 1975, I telephoned Mr. Walker and inquired whether, in view of the length of time that had expired since March 1973 (when defendant Blitz was first summoned to the grand jury) there was any Fein problem which should be brought to the attention of the Court. Mr. Walker said that there was none and that it would be a waste of time to do so.

12. During the trial, several matters relating to the presentation of this case to the grand jury came to light. First, it developed that the case was presented in large part by Special Attorney Ned Levitt of the Organized Crime Strike Force in this district, rather than by the U.S. Attorney. Issues as to his authority, while partially developed, were reserved until after trial. These issues include his authorization [see United States v. Crispino, --F. Supp.-- (S.D.N.Y. 1975)] and the propriety of his being the interrogator and an eventual witness, thereby putting his credibility in issue before the grand jury. Also, an issue exists as to whether the testimony of defendant Blitz, given in August 1973, was ever read to the grand jury that voted




DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

the instant indictment on December 31, 1974. (The "3500" material did not include anything concerning the re-presentation as it related to defendant Blitz.) Lastly, we seek to determine whether the original (March 1973) grand jury was improperly extended and, if so, it is submitted that a hearing should be held to determine whether any evidence was received illegally and later re-presented to the grand jury which voted the instant indictment on December 31, 1974. This last point also raises an issue as to whether sufficient testimony--as regards defendant Blitz--was presented to the grand jury in December 1974 to support the instant indictment.

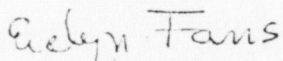
13. We therefore request that the U.S. Attorney in his reply papers to this motion submit the relevant facts regarding the grand jury, thus simplifying the above matters. For some reason, the government has thus far refused to do so. After the return of the guilty verdict on March 4, 1975, A.U.S.A. Walker did indicate to the Court that the first grand jury (viz. March 1973) was extended, but that the grand jury that voted the instant indictment had not been extended. He also said that testimony from this first grand jury had been read to the second grand jury. (The only "live" testimony presented to that grand jury, according to the 3500 material turned over at trial, was that given by Mark and Barry Ross.) It is respectfully requested that the Court direct the U.S. Attorney to advise defense counsel of

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

the facts relating to the above, and if necessary, to direct a hearing on the same so that these issues can be resolved.

  
\_\_\_\_\_  
PAUL K. ROONEY

Sworn to before me this  
10th day of April 1975.

  
EVELYN FANS  
Notary Public, State of New York  
No. 41-1158768  
Qualified in Queens County  
Commission Expires March 30, 1977



DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

1 mcs

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
5 UNITED STATES OF AMERICA, :

6 vs. :

74 Cr. 1226

7 ERIC BLITZ, et al., :

8 Defendants. :

9 -----x  
10 Before:

11 HON. DUDLEY B. BONSAI,

District Judge.

12  
13 New York, January 9, 1973;  
14 4.00 o'clock p.m.  
(Room 2705)

15 APPEARANCES:

16 PAUL J. CURRAN, Esq.,

United States Attorney for the  
Southern District of New York;

17 BY: JOHN WALKER, Esq.,

18 Assistant United States Attorney,  
Of Counsel.

19 PAUL ROONEY, Esq.,

20 Attorney for Defendant Blitz.

21 MARK LARNER, Esq.,

22 Attorney for Defendant Kadison.

23 EDWARD BRODSKY, Esq.,

Attorney for Defendant Rosan.

24 HENRY SCHNITTER, Esq.,

Attorney for Defendant Turco.

25 ELLIOTT WALES, Esq.,

Attorney for Defendant Drew.

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

1 MCS

2 MR. LARNER: Your Honor, I am a member of the  
3 New Jersey Bar. I am here this morning at your direction.  
4 I do not intend nor am I engaged to represent Mr. Kadison.  
5 I appeared with him at the time that he was arrested in  
6 order to procure bail on his behalf.

7 THE COURT: Have you informed Mr. Kadison that  
8 this matter is down for trial on January 27?

9 MR. LARNER: I have advised him what I was  
10 advised by the U. S. Attorney, that there was a pretrial  
11 on the original indictment and that there is a superseding  
12 indictment and that U. S. Attorney would move to have both  
13 of them moved at the same time.

14 MR. WALKER: Then I would move to have the  
15 superseding indictment moved to January 27.

16 MR. LARNER: That is right. That is what he  
17 told me. I do not, however, intend to represent Mr.  
18 Kadison. He was arrested Thursday afternoon. I am a  
19 personal friend of his, being his next door neighbor, and  
20 as a result of compassion I came here. That is the only  
21 reason. By reason of that I don't expect to be drawn  
22 into this case when I don't desire to represent him.

23 THE COURT: All right. The only thing I would  
24 like you to do is inform Mr. Kadison that this trial is  
25 scheduled for January 27 and that I will expect him to have



DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

1 mcs

3

2 a lawyer present and able and willing to represent him  
3 at the trial.

4 MR. LARNER: I trust he will. He has been  
5 making efforts in the last week.

6 THE COURT: It is very important, obviously,  
7 from his point of view that he does.

8 Have you entered a notice of appearance?

9 MR. LARNER: I have entered nothing, your Honor.  
10 The only thing -- unless by reason of the fact that I  
11 appeared with him at the time that bail was set and we  
12 appeared before the U. S. Magistrate. That is the only  
13 time. I have written nothing on behalf of Mr. Kadison  
14 advising the Court that I appear on his behalf.

15 THE COURT: Does the Government have any observa-  
16 tions?

17 MR. WALKER: It is crucial that Mr. Kadison be  
18 ready to go forward at the time of trial. The indictment  
19 was filed on the 31st of December. He was brought in the  
20 2nd of January and immediately, the first thing I said was  
21 that the trial was scheduled for January 27 and asked that  
22 he be ready to go to trial at that time.

23 This week I furnished all defense counsel with  
24 a supplemental -- with a new bill of particulars to conform  
25 to the new indictment and supplied numerous additional

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

1 mcs 4  
2 particulars beyond those in the indictment in respect of  
3 Mr. Kadison and Mr. Turco, who were the two new defendants,  
4 and the Government sees no reason why the trial can't go  
5 forward as to these two men on the 27th.

6 THE COURT: I think all I can do right now is  
7 to urge you to inform your neighbor, Mr. Kadison, to please  
8 get a lawyer immediately and get moving.

9 MR. LARNER: I will do that, your Honor.

10 May I be excused?

11 THE COURT: Yes.

12 MR. LARNER: Thank you.

13 THE COURT: Mr. Panzer the attorney for McLeod  
14 is not here.

15 What about Mr. Richman for Orpheus?

16 MR. ROONEY: I am here covering for him.

17 THE COURT: Mr. Brodsky is here for Rosan.

18 MR. BRODSKY: Yes.

19 THE COURT: Mr. Rosen for Rosenthal is not here.

20 Wha- about Mr. Fitzpatrick?

21 MR. WALKER: I received a telephone call this  
22 morning from Mr. Fitzpatrick to remind me that he sent me a  
23 letter. He also said that he would not be able to be  
24 present today and told me to advise the Court that as far  
25 as the particulars go all differences have resolved between



DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

1 mcs

5

2 the defense and the Government as far as he is concerned.  
3 There are some outstanding motions which he obviously will  
4 not present today, and he wishes to have those open.

5 THE COURT: All right.

6 As to Santiago, Mr. Holzman is not here.

7 What about the defendant Turco?

8 MR. SCHNITTER: Your Honor, my name is Henry  
9 Schnitter and my office is at 253 Broadway, New York City.

10 THE COURT: You represent Mr. Turco?

11 MR. SCHNITTER: I do. Mr. Turco was arrested  
12 only a few days ago and I think that I would respectfully  
13 ask the Court to adjourn Mr. Turco's matter, because it  
14 seems to me that to ask Mr. Turco and his lawyer to be  
15 prepared for the 27th is a little bit harsh. I haven't had  
16 a chance to really --

17 THE COURT: This case is going on. It has to  
18 go on. It was put down, I am afraid, long before this  
19 superseding indictment.

20 MR. SCHNITTER: It isn't Mr. Turco's fault, your  
21 Honor.

22 THE COURT: I understand that. I would like  
23 you, Mr. Schnitter -- I don't know what the alleged role  
24 of Mr. Turco is, but I would be grateful if you would go  
25 ahead and do everything you can to prepare for the trial on

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

1       mcs  
2       the 27th.  
3               MR. SCHNITTER: I don't see how I can, Judge.  
4               THE COURT: Why not?  
5               MR. SCHNITTER: I don't have enough time.  
6       This is not the only case I have.       As a practicing  
7       lawyer I have other matters.       I don't think that I would  
8       be able to inform myself sufficiently about this case by  
9       the 27th.  
10              THE COURT: You don't know that.  
11              MR. SCHNITTER: This is less than a month from  
12       the time of indictment.  
13              THE COURT: When the new bill from Congress  
14       goes into effect in about a year, you might have to try  
15       these things about a week after indictment.       You'll get  
16       used to it....  
17              MR. SCHNITTER: I'm not used to it.  
18              THE COURT: Go ahead and see what you can do.  
19       I don't know what Mr. Turco's role was, whether it is very  
20       complicated.  
21              MR. SCHNITTER: In the alternative I would ask  
22       for a severance.  
23              THE COURT: Go to work on it.       If you will give  
24       me some good reason I'll give you one.  
25              MR. SCHNITTER: I'm telling the Court it doesn't



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2 possible.

3 THE COURT: You made that statement. I am  
4 going to ask you to give it a trial.

5 Finally Van Aken. Did he plead guilty?  
6 Yes, he did to the first indictment, and he  
7 will be withdrawing his plea to that and pleading guilty,  
8 I believe, to the superseding indictment.

9 THE COURT: I asked to have this meeting, which  
10 seems to be very sparsely attended, to see if there was any  
11 remaining problems before we go to trial on the 27th, and  
12 I think there are two motions, as I recall it. There is  
13 a discovery motion by Mr. Rosan.

14 Has that been worked out pretty well, Mr.  
15 Brodsky?

16 MR. BRODSKY: No, your Honor. May I say a  
17 word about that and the trial date, your Honor?

18 First with regard to document discovery, I have  
19 been in touch since I have been with the case or at least I  
20 have been attempting to be in touch with Mr. Walker, who  
21 at that time was on trial, and I told him at that time that  
22 I was prepared to see whatever documents he would make  
23 available. As of yesterday morning -- I don't say this  
24 critically, I really don't, I say it only by way of  
25 indicating my ability to be ready on the 27th, which I am

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

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2 trying to do -- as of yesterday morning Mr. Walker did  
3 make available to me and I suppose to other defense counsel --  
4 I was there yesterday -- three trans-files, if that is what  
5 you call them, full of documents and also told me that  
6 there would be additional documents made available to me,  
7 I think Friday or Saturday.

2 8 Now, I started to go through the documents  
9 yesterday. I only touched the surface. There is a  
10 lot in there. I'm prepared to work as hard as I can.

11 THE COURT: You keep going and then when you  
12 get through with that you will know what if anything is  
13 open.

14 MR. BRODSKY: Yes, but after what has been said  
15 here about the trial date, I just want to go on record  
16 now to inform the Court that as a result of this -- I don'  
17 say it critically -- but it is a fact that we are supposed  
18 to go to trial on January 27 and that yesterday for the  
19 first time the Government produces files full of material  
20 and tells me that there is more.

21 THE COURT: Weren't these files available before  
22 yesterday?

23 MR. BRODSKY: Not to me.

24 MR. WALKER: There weren't any specific requests  
25 to see documents.



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2                   THE COURT:   This case has been around for a  
3 long time.   Weren't these documents available?

4                   MR. WALKER:   They have been available.

5                   MR. BRODSKY:   That just isn't true.

6                   THE COURT:   Wait a minute.   I don't want to  
7 get into all that.   I know this thing has been around for  
8 a long time.       There have been motions for discovery.  
9 We set this thing down for January 27.       I guess we did  
10 that a month ago.   Everybody knew that.   You knew that.

11                   MR. BRODSKY:   Absolutely.   I spoke to Mr.  
12 Walker before Christmas and I said, "John, when can I see  
13 the documents?"

14                   He said, "I hope I can have them on January 6."

15                   On January 6 of this week I spoke -- I don'  
16 know her name.   She works for Mr. Walker.   She is a para-  
17 legal.

18                   MR. WALKER:   Marsha McCann.

19                   MR. BRODSKY:   I told her "I was told by Mr.  
20 Walker that the documents would be ready January 6th."

21                   She said, "They are not ready today.   Come in  
22 on Friday."

23                   I said, "That is a long time."

24                   She made them available to me yesterday.

25                   I represent to the Court they were not avail-

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2 able --

3 THE COURT: I'm not quarreling with you.

4 MR. BRODSKY: I'm surprised at this. I --

5 THE COURT: Let's not get -- the documents are  
6 available. Let's go ahead with ie.

7 MR. BRODSKY: That aspect I saw yesterday.  
8 There are leads in there. There are things I want to  
9 investigate as a result of those documents. Unfortunately  
10 it just takes time.

11 The second problem with this trial date is that  
12 we now have a superseding indictment. If these new  
13 defendants and new charges are not going to be aired on  
14 January 27, of course there is no new problem. The new  
15 charges are quite different, at least in my opinion, than  
16 what has been in the indictment before and it is going to  
17 take some time. What they are charging here now is some  
18 kind of an extortion which I say is inconsistent with the  
19 conspiracy. In any event, it is going to resolve in a  
20 reformed motion for a severance on my part because I think  
21 with these new charges it would be additionally prejudicial  
22 for me to go to trial with these new defendants and new  
23 charges.

24 I got this indictment late Monday and we are  
25 working on a motion, I believe, your Honor, to dismiss



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2 Count 1 of the indictment and also on a motion for a  
3 severance with respect to Mr. Rosan. With respect to  
4 Mr. Rosan, I'm confident that if he was severed from this  
5 case we could go to trial much quicker obviously.

6 THE COURT: The Government is going to oppose  
7 that and I don't want to try all these defendants separately.

8 MR. WALKER: We surely oppose it.

9 MR. BRODSKY: There was a motion for a severance  
10 made. There was no supporting material. That was done  
11 by counsel before me in the case. I have been waiting  
12 to hear who is going to plead guilty. We had discussed  
13 this, if your Honor recalls, in a prior pretrial conference,  
14 that it would be appropriate to wait to see who was going  
15 to plead guilty, because the motion for severance would  
16 take on a different structure when we knew that. I have  
17 been kind of waiting for that, but now with the superseding  
18 indictment I can't get this motion for severance to your  
19 Honor if I don't know who is pleading guilty.

20 THE COURT: I want you to do that as quickly as  
21 possible. Those are the two things you have got in mind;  
22 is that it?

23 MR. BRODSKY: There is the bill of particulars,  
24 your Honor.

25 THE COURT: You have got to look at all these

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

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2 documents. You better see what they have got and then  
3 come back and see what you need that you haven't got.  
4 Maybe he will give it to you.

5 MR. BRODSKY: Okay.

6 THE COURT: I think it is better to do that.

7 MR. BRODSKY: Just for the record, I have no  
8 objection to doing that. Just for the record, your Honor,  
9 I just want to notify the Court that Mr. Walker and I have  
10 not been able to agree on particulars. I do have many  
11 outstanding demands which I think I need before I go to  
12 trial which have not yet been supplied. I also have my  
13 motion for a suppression --

14 THE COURT: I said any motions to suppress will  
15 take place at the beginning of the trial.

16 MR. BRODSKY: It is an open motion.

17 THE COURT: Mr. Rooney.

18 MR. ROONEY: I represent Mr. Blitz, your Honor.  
19 I filed a supplementary affidavit in support of the motion  
20 for a severance which I filed in mid-December. I gave a  
21 copy to Mr. Walker this morning. I handed up a copy to  
22 the Court.

23 Your Honor, Mr. Blitz, I think it is fair to say,  
24 and I think the Government should concede, was not part of  
25 this conspiracy. As I outlined in my supplemental



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2 affidavit, in the first trial Blitz was tried alone.

3 He was granted a severance.

4 George Van Aken testified, when he was asked  
5 by you, "Did Blitz know of any manipulations where you" --  
6 Van Aken -- "knew about the manipulations?"

7 That was at a time when Van Aken was describing  
8 all the manipulations in which he was involved. Van Aken's  
9 answer was "No."

10 The charge in this case is quite simple.  
11 The Government has alleged that Blitz received a \$25,000  
12 payoff, pure and simple. It is all contained in Count 19  
13 in the indictment. That is what this case is all about.  
14 He knows none of these other people, virtually. He did  
15 know Peter Rosenthal and George Van Aken. The other  
16 people are just unknown to him.

17 This is very similar to the first motion for a  
18 severance, the motion in the Acrite case.

19 MR. WALKER: The conspiracy charge here is not  
20 simply that there was a manipulation. It is the fraudu-  
21 lent sale of stock and in this situation where Blitz is  
22 charged with receiving a payoff from Van Aken to fraudu-  
23 lently sell the stock to the Astran Fund, and he is also  
24 aware of and knows Rosenthal and he knows Van Aken and he  
25 had dealings with Van Aken and got a payoff to sell the

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2 stock to the Fund, so that the Government feels it is  
3 warranted in charging him with conspiracy to join the  
4 fraudulent sale of this stock, and that is one of the charges  
5 here.

6 There are numerous objects of the conspiracy.  
7 There is mail fraud. There is 10b-5 fraud, and there is  
8 fraudulent sale of stock.

3 9 THE COURT: Is he charged with 10b-5 or is he  
10 charged with having taken some of the stock of the Fund?

✓ 11 MR. WALKER: He is charged with being a member  
12 of the conspiracy, one of the objects of which is to  
13 fraudulently sell the stock.

14 If your Honor would direct your attention to  
15 Paragraph 2 of Count 1, one of the objects of this is to  
16 employ a device, scheme and artifice to defraud in connec-  
17 tion with the offer and sale of securities, and it is also  
18 a 10b-5 violation, the Government would contend, because  
19 it is fraud in connection with the purchase and sale, and  
20 there are also mail fraud charges here which deal with the  
21 Astran Fund. The Astran Fund transactions are integral  
22 to the entire case.

23 Mr. Blitz' involvement is also alleged as an  
24 overt act in furtherance of this conspiracy. It is not  
25 merely whether he knew, actually was told of any particular



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2 manipulation. It is a question of receiving a payoff  
3 and engaging in the fraudulent sale of the stock as part  
4 of a general pattern of fraudulent sale.

5 Also, what Van Aken may say concerning Blitz'  
6 knowledge is a far cry from establishing that Blitz did not  
7 know that one of the objects of this conspiracy was to  
8 fraudulently sell stock. Indeed, it is most regular for  
9 a fund manager to have to take a payoff to sell the stock  
10 and for him to realize that Van Aken has to make a payoff  
11 in order to get the stock sold.

12 I don't want to argue the motion at the close  
13 of the Government's case now, but it seems to me, your Honor,  
14 that there is ample evidence from which the Government will  
15 establish at trial that Blitz' participation in the con-  
16 spiracy, which is a multi-faceted objected conspiracy is  
17 not simply a manipulation. It is a fraudulent sale.

18 THE COURT: That is what bothers me about this  
19 testimony you have about manipulation. As I understand  
20 the Government's theory here it is that this was a fraudulent  
21 sale of stock in violation of the 10b-5; is that right?

22 MR. WALKER: Yes, of 17-A of the 1933 Act.

23 MR. ROONEY: There is no evidence to back that  
24 up, I'll guarantee, in the grand jury minutes. They think  
25 they will have an easier time this way. I know why they

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2 put him in. They told me.

3 MR. WALKER: It is not fair for defense to say  
4 that.

5 MR. ROONEY: You told me that, Mr. Walker.

6 MR. WALKER: You told me a lot of things too.  
7 You told me your client was guilty.

8 MR. ROONEY: The Blitz situation is cut and  
9 dried. In the grand jury minutes he allegedly got a  
10 \$25,000 payoff from Van Aken. There is proof. There  
11 is a check that he paid \$26,750, 25,000 plus interest back  
12 to him. The question is whether it was a bribe. It is  
13 fine to point to the indictment. There is no evidence to  
14 back that up.

15 THE COURT: If it wasn't that, a bribe, of  
16 course there is nothing to it. If it was a bribe, I  
17 suppose the Government's contention is that this was his  
18 role in the conspiracy, I take it.

19 MR. WALKER: That is right.

20 THE COURT: I'm afraid I have got to go along  
21 with that. I'm afraid I've got to deny your motion.  
22 I think they are entitled to that. It is a single con-  
23 spiracy.

24 This is on for the 27th. I'm in Part 1 for  
25 the next two weeks, but the way the thing is shaping up to



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2 me, I think we are going to have another conference.

3 MR. ROONEY: Your Honor, I have another problem,  
4 a Brady v. Maryland. There are no standards under Brady  
5 and if you don't know what Brady is you can't ask for it.

6 In the last trial, at the very end of the trial,  
7 the Government produced for me the tax return of, I think  
8 it is, International Venture Corporation, which corroborated  
9 our defense. I will ask them again, but I don't know what  
10 to point to.

11 THE COURT: I will ask the Government to furnish  
12 the defense with any material they have which by any reason-  
13 able hypothesis might be favorable to the defendants.  
14 I think the Government should do that just as soon as  
15 possible.

16 MR. WALKER: I will do that as soon as it  
17 becomes available and I become aware of it.

18 MR. ROONEY: I would ask your Honor to direct  
19 the Government that if there is any question about it, just  
20 to turn the material over to you to make the decision.

21 THE COURT: I don't think I can do that.  
22 I would rather say that my view is if there is any question  
23 about it, turn it over. I don't know why I have to look  
24 at it. I would think and I would hope the Government  
25 would lean over backwards on this and give the defendant

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

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2 the benefit of the doubt, if for any reasonable hypothesis  
3 it could be favorable.

4 MR. WALKER: Very well, your Honor.

5 MR. BRODSKY: May I just raise one or two quick  
6 points in connection with my motion to suppress the testi-  
7 mony before the SEC of Mr. Rosan and that is, your Honor,  
8 based on the Geary case in the Supreme Court, as your Honor  
9 may know. The person gets use immunity if one hears that  
10 he is under reasonable fear of economic harm. At least in  
11 one of the cases I know about, and perhaps in others, it  
12 may be necessary if your Honor decides that I'm not right  
13 just on the papers -- it may be necessary to call a hearing  
14 and just procedurally -- I don't know how your Honor wants  
15 to do that -- if we are all here ready for trial on one day  
16 how we are going to handle that problem.

17 THE COURT: On anything like that if we have to  
18 hold a hearing I want to do that before the jury panel  
19 comes up.

20 MR. BRODSKY: I understand. I don't want to  
21 come in on that day and surprise everybody. I have it in  
22 my papers. I want to put it on the record. I would  
23 need some time. I suppose the Government has control over  
24 the people from the SEC. It may not have control over  
25 the people from the NASD, but that depends on whether your



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2 Honor wants to hold it.

3 THE COURT: I don't know whether I want to hold  
4 it. I want to find out about it.

5 MR. BRODSKY: I may need some time to call a  
6 witness from the NASD, your Honor.

7 MR. WALKER: At least a week before trial we  
8 will be filing opposing papers to this particular motion,  
9 which is a different kind of motion than one usually comes  
10 across in this kind of case, and we will oppose any hearing  
11 and oppose the motion in its entirety, but the Government  
12 will file its papers.

13 THE COURT: As I say, I am going into Part 1,  
14 so I am not going to have too much time to give to this,  
15 but I think that we probably ought to set up a date where  
16 we can have a further conference on some of these matters  
17 before the 27th.

18 Gentlemen, how about Monday the 20th, say at  
19 around 4 o'clock. We will have a further conference, if  
20 any problems come up. I have this courtroom and I think  
21 I can try this case in this courtroom.

22 MR. WALKER: It is going to be kind of crowded.  
23 We have the possibility of nine defendants or so, subject  
24 to further pleas that might take place. I can announce  
25 the pleas. I have no secret from the defense lawyers as

DEFENDANT BLITZ' MOTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIAL

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2 to the pleas scheduled for next week:

3 Irwin Gerstenzang, Stephen Hill, William McLeod,  
4 Peter Rosenthal, John Santiago and George Van Aken.

4 5 I think it would be kind of crowded, your Honor,  
6 and I think that given the substantial nature of this case  
7 that alternates should be chosen.

8 THE COURT: How long do you think this trial  
9 will take with those defendants out of the case?

10 MR. WALKER: Streamlining it as much as  
11 possible, I think that the Government can put on its case  
12 in two weeks.

13 MR. ROONEY: May we have access to the tax  
14 returns prior to trial of George Van Aken and any of the  
15 companies that are involved here? I am hoping to short-  
16 cut this.

17 MR. WALKER: There is no precedent for defense  
18 lawyers asking for tax returns which are confidential  
19 documents of the Government witnesses unless they fall  
20 within 3500 material or Brady material.

21 The Government is going to examine these tax  
22 returns to see whether or not by any reasonable hypothesis  
23 they are Brady material and if so they will be furnished.

24 MR. ROONEY: The tax returns of International  
25 contain information about Acrite.



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2 THE COURT: You have seen it?

3 MR. ROONEY: Yes, and I would like to see it  
4 again.

5 THE COURT: I think we will have to arrange  
6 this on the 20th at 4 o'clock and see what else comes up  
7 and I will make an attempt to see if I can get another court-  
8 room. I'm not sure if I can. If I don't, it will be  
9 an awfully tight fit.

10 MR. WALKER: There is one other matter.

11 I'm not really sure if this affects defense  
12 counsel in this case, but the Government served a subpoena  
13 on two individuals, a lawyer and a man who was a subtenant  
14 of Mr. Van Aken's for certain documents which those  
15 individuals had belonging to Mr. Van Aken. Some documents  
16 have been furnished to us. It is my understanding that  
17 not all the documents have been furnished to us by these  
18 other individuals. There are some other documents that  
19 these individuals have pertaining to this particular case  
20 that would assist the Court, the defense and the Government  
21 in being precise and accurate as to dates in this particular  
22 matter.

23 Accordingly, I would like your Honor to set  
24 aside some time for a possible hearing. I think that if  
25 your Honor --

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2 THE COURT: I'm in Part 1, which is practically  
3 to set time. I you will let me know, I will see what I  
4 can do.

5 MR. WALKER: Yes.

6 THE COURT: I will try to do the best I can.

7 MR. WALKER: I think, frankly, if I notify  
8 these gentlemen that your Honor is prepared to hear the  
9 matter in court it may resolve the problem.

10 THE COURT: Thank you, gentlemen.

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DEFENDANT BLITZ' MCTION FOR A JUDGMENT OF ACQUITTAL OR FOR A NEW TRIALUNITED STATES v. BLITZ (74 cr. 1226 s)SUMMARY OF TESTIMONY  
CONCERNING ERIC BLITZ

<u>Witness</u>	<u>Total Testimony</u>	<u>Re Blitz</u>	<u>Paul K. Rooney Cross Examination</u>	<u>T o t a l Case</u>	<u>Blitz</u>
Peter Rosenthal	R. 107-211 (104 pp.)	R. 129-147	R. 151-73 R. 1556-64	112	48
Eleanor Palmer	R. 338-98	ALL		60	60
George Van Aken	R. 399-983	R. 453-63	R. 602-68	584	110
John Bradley	R. 084-1113	R. 1005-22	R. 1023-65a	129	59
George Russell	R. 1453-1481	ALL		28	28
Dean Willeford	R. 1925-2042	R. 1941-42 R. 1961-62	R. 1975-79	117	6
					<u>311</u>

GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIAL

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DFA:ee

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

-v- :

ERIC T. BLITZ, et al., :

Defendants. :

AFFIDAVIT

S 74 Cr. 1226

-----X  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

DOMINIC F. AMOROSA, being duly sworn deposes  
and says:

(1) I am an Assistant United States Attorney  
in the office of Paul J. Curran, United States Attorney for  
the Southern District of New York, and am familiar with the  
facts of this case.

(1a) This affidavit is being submitted, along  
with the accompanying memorandum of law, in opposition to  
the motions by Eric Blitz, Richard Orpheus and Peter Horvat  
for a new trial or, alternatively, a judgment of acquittal.

(2) On August 9, 1974, the defendants, Blitz,  
Orpheus, Drew and Horvat were indicted along with nine other  
individuals for conspiracy to violate Title 15, United  
States Code, Sections 77q(a), 77x, 78j(b), 78ff and Rule  
10(b) 5 (17 CFR Section 240.10b-5), and Title 18, United  
States Code, Section 1341, as well as substantive violations  
of these sections. The defendant Blitz was also indicted  
for a violation of Title 15, United States Code, Sections  
80a-17(e)(1) and 80-a-48. The docket number of this  
Indictment was 74 Cr. 793.

(3) The Grand Jury which returned this  
indictment was empanelled on August 22, 1972, in the  
Southern District of New York (see exhibit 1 attached).  
On February 22, 1974, this grand jury's tenure was extended  
pursuant to Title 18, United States Code, Section 3331(a)  
until August 22, 1974.



GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
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(4) On August 9, 1974, when 74 Cr. 798 was returned, the Grand Jury was in its extension period.

(5) The Order empanelling this Grand Jury does not state whether it was empanelled pursuant to Rule 6(a) of the Federal Rules of Criminal Procedure or Title 18, United States Code, Section 3331. (Exhibit 1).

(6) Testimony was presented to the August 1972 Grand Jury in connection with Indictment Number 74 Cr. 798 both before and after the extension on February 22, 1974.

(7) On December 31, 1974, Superseding Indictment Number 74 Cr. 1226 was returned naming the defendants Blitz, Orpheus, Drew and Horvat as defendants and charging them with the identical allegations made against them in 74 Cr. 798.

(8) Indictment S 74 Cr. 1226 was returned by a Grand Jury empanelled on August 21, 1973.

(9) At the time Indictment S 74 Cr. 1226 was returned by the Grand Jury empanelled on August 21, 1973, this Grand Jury's tenure had not been extended.

(10) Testimony which had been presented in connection with Indictment 74 Cr. 798 was read to the Grand Jury which returned S 74 Cr. 1226.

(11) Mark Ross and Barry Ross also testified before the Grand Jury which returned S 74 Cr. 1226 on December 31, 1974.

(12) Evidence was presented to the August 1972 Grand Jury relating to 74 Cr. 798 by the following individuals who were Special Attorneys of the Department of Justice at the time of the presentations: Edward H. Shaw; Edward Levitt; Michael Iberhardt and Joel M. Friedman.

(13) The individuals referred to in paragraph 12 of this affidavit were given written authorization to appear before, and present matters to, any federal grand

GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIAL

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jury empanelled in the Southern District of New York. These individuals did not participate in any grand jury proceeding in the Southern District of New York prior to the time that such written authorization was given to them by the United States Department of Justice. (See exhibits 2, 3, 4 and 5 for Letters of Authorization).

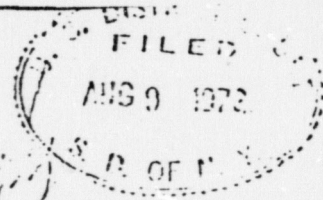
(14) Evidence was presented to the Grand Jury which returned S 74 Cr. 1226 by John Walker, Assistant United States Attorney, and Edward Levitt, Special Attorney of the Department of Justice.

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DOMINIC F. ABRONSA  
Assistant United States Attorney

Sworn to before me this  
day of April, 1975



GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIALSTATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----x  
IN THE MATTER :

OF :

ORDER

THE EMPANELLING OF AN ADDITIONAL :

GRAND JURY FOR THE AUGUST, 1972 :

TERM OF COURT. :

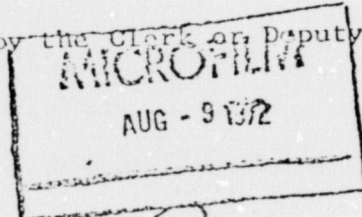
*72 Weeks #1 Page 19.*

The United States Attorney for the Southern District of New York, having duly verified in writing on the 1st day of August, 1972, that the exigencies of the public service require the empanelling of an additional grand jury for the disposal of Government business of the said Southern District of New York, it is hereby

ORDERED, that the Clerk or any authorized Deputy Clerk of this Court, having already been ordered to publicly draw a sufficient number of jurors to report on the 21st day of August, 1972, that from among said jurors there shall be empaneled an additional Grand Jury to serve from August 22, 1972 at said Court. Such jurors shall be drawn from the Qualified Jury Wheel containing the names of the persons to serve as jurors in this Court, which shall have been placed therein by the Clerk, or Deputy Clerk for Juries. The Clerk or Deputy Clerk for Juries immediately after said drawing shall file in the Clerk's Office a list certified by him of the names and residence of the jurors so drawn. The said jurors shall be summoned to attend Court on the 22nd day of August, 1972, at the time ordered by the Clerk or Deputy Clerk for Juries.

Dated: New York, New York

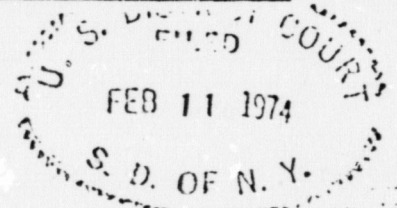
August 9, 1972



*Chief* *United States District Judge*

PTB:jbm

*Aug 1972*  
*Chief Clerk*

GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIALSOUTHERN DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
 IN THE MATTER :  
 OF :  
 THE GRAND JURY EMPANELLED :  
 ON AUGUST 22, 1972 :  
 ----- x

ORDER

FEB 11 1974

74 CR 1100 7 13

The United States Attorney for the Southern District of New York, having duly verified in writing on the 4<sup>th</sup> day of February, 1974, that the business of the Special Grand Jury empanelled on August 22, 1972 for the inquiry of the offenses against the criminal laws of the United States alleged to have been committed within the said Southern District of New York has not been completed, it is hereby:

ORDERED, that, pursuant to Section 3331(a) of Title 18, United States Code, the term of said Special Grand Jury is extended for a period of six months from February 22, 1974 until August 22, 1974.

Dated: New York, New York

February //, 1974

BSJ:mlc

*John E. ...*  
 UNITED STATES DISTRICT JUDGE  
*West ...*




GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIAL

---

OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

April 5, 1973



Mr. Edward J. Levitt  
c/o Criminal Division  
Department of Justice  
Washington, D. C.

Dear Mr. Levitt:

The Department is informed that there have occurred and are occurring in the Southern District of New York and other judicial districts of the United States violations of federal criminal statutes by persons whose identities are unknown to the Department at this time.


As an attorney at law you are specially retained and appointed as a Special Attorney under the authority of the Department of Justice to assist in the trial of the aforesaid cases in the aforesaid district and other judicial districts of the United States in which the Government is interested. In that connection you are specially authorized and directed to file informations and to conduct in the aforesaid district and other judicial districts of the United States any kind of legal proceedings, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized to conduct.

Your appointment is extended to include, in addition to the aforesaid cases, the prosecution of any other such special cases arising in the aforesaid district and other judicial districts of the United States.

You are to serve without compensation other than the compensation you are now receiving as an employee of the Securities and Exchange Commission.

Please execute the required oath of office and forward a duplicate thereof to the Criminal Division.

Sincerely,

  
Joseph T. Sneed  
Deputy Attorney General

GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIALForm No DJ-16  
(Rev. 12-12-56)FILED  
U.S. DISTRICT COURT  
OATH OF OFFICE (Without Compensation)  
APR 25 2 22 PM '73  
S.D.G.F.N.Y.

M10-458

I, EDWARD J. LEVITT, do solemnly

swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of Special Attorney on which I am about to enter in the Southern District of New York pursuant to the authorization of Joseph T. Sneed, Deputy Attorney General, Department of Justice dated April 5, 1973 and filed herewith:

So help me God.

XXXXOn which I am about to enter: So help me GodXXXXXX

(Sign here)

Edward J. LevittDate of Birth 5-6-44Date of entry upon duty 4-25-73

Subscribed and sworn to before

me this 25TH dayof APRIL A. D., 19 73, at NEW YORK, N.Y.  
(City and State)

(Seal)

Robert R. Smith  
(Signature of Officer)Deputy Clerk  
(Title) U.S.D.C. S.D. of N.Y.

NOTE - If the certificate is executed by a Notary Public, the date of expiration of his commission should be shown.



GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIAL

---

ATTEST: ~~GENERAL~~  
CRIMINAL DIVISION

Department of Justice

Washington 20530  
September 12, 1972

Mr. Edward M. Shaw  
Criminal Division  
Department of Justice  
Washington, D. C.

Dear Mr. Shaw:

As an attorney and counselor at law you are hereby specially retained and appointed as a Special Attorney under the authority of the Department of Justice to assist in the trial of the case or cases growing out of the transactions hereinafter mentioned in which the Government is interested. In that connection you are specifically directed to file informations and to conduct in the Southern District of New York and in any other judicial district where the jurisdiction thereof lies any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized by law to conduct.

The Department is informed that various persons, companies, corporations, firms, associations, and organizations to the Department unknown have violated in the above-named district and in other judicial districts the laws relating to extortion in aid of racketeering (18 U.S.C. 1951), embezzlement of union funds (29 U.S.C. 501(c)) and the funds of welfare and pension plans (18 U.S.C. 664), payments by employers to their employees and to officials of labor organizations (29 U.S.C. 186), the filing of reports and the maintenance of records by unions and union officials (29 U.S.C. 439), deprivation of the rights of a union member by force (29 U.S.C. 530), obstruction of justice (18 U.S.C. 1503), obstruction of criminal investigations (18 U.S.C. 1510), obstruction of state or local law enforcement (18 U.S.C. 1511), travel and transportation in aid of racketeering (18 U.S.C. 1952), transmission of bets, wagers, and related information by wire communications (18 U.S.C. 1084), interstate transportation of wagering paraphernalia (18 U.S.C. 1953), prohibition of illegal gambling businesses (18 U.S.C. 1955), racketeer influenced and corrupt organizations (18 U.S.C. 1962), perjury (18 U.S.C. 1621), false declarations (18 U.S.C. 1623), mail fraud (18 U.S.C. 1341), fraud by wire (18 U.S.C. 1343), interstate transportation of stolen property (18 U.S.C. 2314), wire and radio communication (47 U.S.C. 203 and 501), internal revenue (26 U.S.C. 7201-7206), and other criminal laws of the United States and have conspired to commit all such offenses in violation of Section 371 of Title 18 of the United States Code.

GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIAL

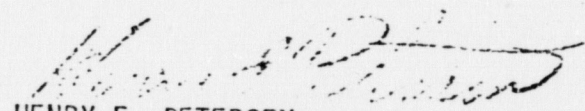
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- 2 -

You are to serve without compensation other than the compensation you are now receiving under existing appointment.

Please execute the required oath of office and forward a duplicate thereof to the Criminal Division, Department of Justice.

Sincerely,



HENRY E. PETERSEN  
Assistant Attorney General



GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIALEX NO DJ-16  
NY 12-12-66)

M/E-958

OATH OF OFFICE (Without Compensation)FILED  
U.S. DISTRICT COURT

Nov 72 12 23 PM '72

I, EDWARD M. SHAW, do solemnly

swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faith-

fully discharge the duties of the office of Special Attorney under letter of appointment dated September 12, 1972 authorizing me to assist in presentation to the grand jury and trial of the case or cases in the Southern District of New York in which the Department is informed that various persons, companies, corporations, firms, associations, and organizations to the Department unknown have violated in the above-named district and in other judicial districts laws relating to extortion in aid of racketeering (18 U.S.C. 1951), embezzlement of union funds (29 U.S.C. 501(c)) and the funds of welfare and pension plans (18 U.S.C. 664), etc., as set forth in letter of appointment dated September 12, 1972,

on which I am about to enter: So help me God:

(Sign here)

*Ed M Shaw*Date of Birth 4/27/37Date of entry upon duty Aug, 1972

Subscribed and sworn to before

me this 22 dayof NOVEMBER A. D., 1972, at New York NY 12:23 PM  
(City and State)*Walter G. Brannon*

(Signature of Officer)

(Seal)

WALTER G. BRANNON  
Notary Public, State of New York  
No. 24 0524500Qualified in Kings County  
Certificate filed in New York County  
Term Expires March 30, 1973

(Title)

NOTE - If the certificate is issued by a Notary Public, the date of expiration of his commission should be shown.

GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIAL

---

ATTORNEY GENERAL  
CRIMINAL DIVISION

7110-458

Department of Justice

Washington 20530

November 30, 1972

Mr. Michael C. Eberhardt  
Criminal Division  
Department of Justice  
Washington, D. C.

Dear Mr. Eberhardt:

The Department is informed that there have occurred and are occurring in the Southern District of New York and other judicial districts of the United States violations of federal criminal statutes by persons whose identities are unknown to the Department at this time.

As an attorney at law you are specially retained and appointed as a Special Attorney under the authority of the Department of Justice to assist in the trial of the aforesaid cases in the aforesaid district and other judicial districts of the United States in which the Government is interested. In that connection you are specially authorized and directed to file informations and to conduct in the aforesaid district and other judicial districts of the United States any kind of legal proceedings, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized to conduct.

Your appointment is extended to include, in addition to the aforesaid cases, the prosecution of any other such special cases arising in the aforesaid district and other judicial districts of the United States.

You are to serve without compensation other than the compensation you are now receiving under existing appointment.

Please execute the required oath of office and forward a duplicate thereof to the Criminal Division.

Sincerely,

  
HENRY E. PETERSEN

Assistant Attorney General



GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIALForm No DJ-16  
(Rev. 12-12-56)

M 10. 458

OATH OF OFFICE (Without Compensation) <sup>FILED</sup>

DEC 18 11 45 AM '72

I, MICHAEL C. EBERHARDTS.D. N.Y., do solemnly

swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of Special Attorney on which I am about to enter in the Southern District of New York pursuant to the authorization of Henry E. Petersen, Assistant Attorney General, Criminal Division dated November 30, 1972 and filed herewith:

So help me God.

(Sign here)

Michael C. EberhardtDate of Birth August 1, 1947Date of entry upon duty December 18, 1972

Subscribed and sworn to before

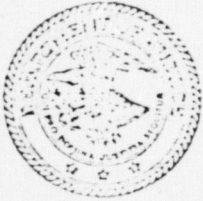
me this 18<sup>th</sup> dayof December A. D., 1972, at New York, N.Y.  
(City and State)

(Seal)

Richard H. Sullivan  
(Signature of Officer)Admission Clerk to the Clerk  
(Title)

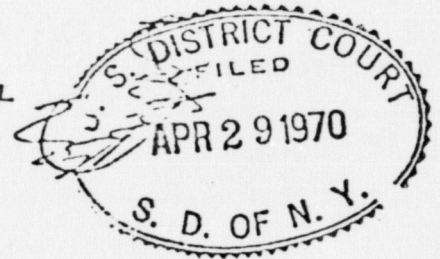
NOTE - If the certificate is executed by a Notary Public, the date of expiration of his commission should be shown.

GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIAL



OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

April 9, 1970



M 10-458

Mr. Joel M. Friedman  
Criminal Division  
Department of Justice  
Washington, D. C.

Dear Mr. Friedman:

As an attorney and counselor at law you are hereby specially retained and appointed as a Special Attorney under the authority of the Department of Justice to assist in the trial of the case or cases growing out of the transactions hereinafter mentioned in which the Government is interested. In that connection you are specifically directed to file informations and to conduct in the Southern District of New York and in any other judicial district where the jurisdiction thereof lies any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized by law to conduct.

The Department is informed that various persons, companies, corporations, firms, associations, and organizations to the Department unknown, have violated in the above-named district and in other judicial districts the laws relating to extortion in aid of racketeering (18 U.S.C. 1951), travel and transportation in aid of racketeering (18 U.S.C. 1952), transmission of bets, wagers, and related information by wire communications (18 U.S.C. 1084), interstate transportation of wagering paraphernalia (18 U.S.C. 1953), perjury (18 U.S.C. 1621), mail fraud (18 U.S.C. 1341), fraud by wire (18 U.S.C. 1343), interstate transportation of stolen property (18 U.S.C. 2314), wire and radio communication (47 U.S.C. 203 and 501), internal revenue (26 U.S.C. 7201-7206), and other criminal laws of the United States and have conspired to commit all such offenses in violation of Section 371 of Title 18 of the United States Code.

You are to serve without compensation other than the compensation you are now receiving under existing appointment.

Please execute the required oath of office and forward a duplicate thereof to the Criminal Division, Department of Justice.

Sincerely,

Richard G. Kleindienst  
Deputy Attorney General



GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION FOR ACQUITTAL OR  
NEW TRIAL

Form No. DJ-16  
Rev. 12-12-56)

OATH OF OFFICE (Without Compensation)

I, JOEL M. FRIEDMAN, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of Special Attorney under letter of appointment dated April 9, 1970, authorizing me to assist in presentation to the grand jury and trial of the case or cases in the Southern District of New York in which the Department is informed that various persons, companies, corporations, firms, associations, and organizations to the Department unknown have violated in the Southern District of New York and in other judicial districts laws relating to extortion in aid of racketeering (18 U.S.C. 1951), travel and transportation in aid of racketeering (18 U.S.C. 1952), transmission of bets, wagers, and related information by wire communications (18 U.S.C. 1084), interstate transportation of wagering paraphernalia (18 U.S.C. 1953), etc., as set forth in letter of appointment dated April 9, 1970, on which I am about to enter: So help me God.

(Sign here)

Joel M. Friedman

Date of Birth

5/7/45

Date of entry upon duty

4/6/70

Subscribed and sworn to before

me this

29<sup>th</sup>

day

of

April

A. D.,

19

at

New York N.Y.  
(City and State)

(Seal)

(Signature of Officer)

JEREMIAH A. MURPHY

(Title)

NOTE - If the certificate is executed by a Notary Public, the date of expiration of his commission should be shown.

COURT'S ORAL DECISION DENYING DEFENDANT BLITZ' NEW TRIAL MOTION,  
MAY 29, 1975

---

1 sls

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 UNITED STATES OF AMERICA,

6 vs.

74 Cr. 1226 (S)

7 ERIC BLITZ,

8 Defendant.

9 -----X

10 Before:

11 HON. DUDLEY B. BONSAL,

District Judge.

13 New York, May 29, 1975;  
14 9.30 o'clock a.m.

15 APPEARANCES:

16 PAUL J. CURRAN, Esq.,

United States Attorney for the  
Southern District of New York;

18 BY: EDWARD LEVITT, Esq.,

Special Attorney,  
Organized Crime Strike Force.

20 PAUL ROONEY, Esq.,

Attorney for Defendant.

22 ---



COURT'S ORAL DECISION DENYING DEFENDANT BLITZ' NEW TRIAL MOTION,  
MAY 29, 1975

---

1 sls

2

2 THE CLERK: United States of America versus  
3 Eric Blitz.

4 MR. LEVITT: Ready.

5 MR. ROONEY: Ready.

6 THE CLERK: Both sides ready.

7 THE COURT: I think the defendant made a motion  
8 in this case for a judgment of acquittal or a severance  
9 and a new trial, and, as I recall it, it was on several  
10 grounds, the first being the prejudice to the defendant,  
11 as I understand it, of being tried with the other defend-  
12 ants, improper joinder, under the rules.

13 Also on the ground that the grand jury procedure  
14 was improper here; and, finally, on the Crispino case,  
15 the possibility of an extended grand jury.

16 Is that right, Mr. Rooney? Those were the  
17 grounds, I believe.

18 MR. ROONEY: Yes, your Honor.

19 THE COURT: I received your papers and I  
20 received the Government's answering papers, and I am going  
21 to deny these motions.

22 The Crispino case, I take it, is on appeal, and  
23 I think there are several cases the other way in the  
24 District Court, and the Court of Appeals will rule on that.

25 I do not find that anything was improper in

COURT'S ORAL DECISION DENYING DEFENDANT BLITZ' NEW TRIAL MOTION,  
MAY 29, 1975

---

1 sls

3

2 the grand jury procedure.

3 So far as the prejudice and improper joinder,  
4 all I can say is that I believe the defendant got a fair  
5 trial, and I think that is about the way I would leave it.

6 So I am prepared to proceed with the sentence  
7 of Mr. Blitz.

8 Has the Government anything they would like to  
9 say about the sentence?

10 I did receive a memorandum of which Mr. Rooney  
11 has received a copy.

12 MR. LEVITT: Other than what is stated in the  
13 Government's sentencing memorandum the Government has  
14 nothing further to say, your Honor.

15 THE COURT: All right.

16 Mr. Rooney?

17 MR. ROONEY: Your Honor, if I may, I do have  
18 something to add just briefly, but if I may I would like to  
19 correct a statement which I frankly never saw in the record  
20 until I got the transcript of the January 9th proceeding  
21 before your Honor, where Mr. Walker said -- frankly, it  
22 just astounds me because I did not hear it at the time,  
23 though I recall the situation -- Mr. Walker said I told him  
24 that my client was guilty.

25 As I recall the situation, our voices were



COURT'S ORAL DECISION DENYING DEFENDANT BLITZ' NEW TRIAL MOTION,  
MAY 29, 1975

---

1 sls

4

2 raised, and I was paying attention to the Court, and I  
3 think you wanted to interrupt both of us, but I didn't hear  
4 this. Maybe this is a misstatement or a misquote by the  
5 reporter, but I think the record is clear how vigorously I  
6 tried to defend Mr. Blitz, and I emphatically --

7 THE COURT: If that was said, Mr. Rooney, I  
8 assure you I didn't hear it, and I think I have known you  
9 long enough, I wouldn't expect you to make such a statement.

10 MR. ROONEY: I never did make such statement.

11 Mr. Walker is not here so it can't be stricken,  
12 but I also want to be on the record as saying I don't agree  
13 with it.

14 Also, if I may, I would like to renew the motions  
15 I made prior and bring them up on the date of sentence,  
16 and I would like to just renew them --

17 THE COURT: You have renewed them and I am  
18 denying them. You have an exception.

19 MR. ROONEY: Your Honor, with respect to the  
20 sentencing of Mr. Blitz, I don't know, frankly, if there  
21 is much I can add.

22 You have sat through two trials; you have seen  
23 him testify twice. In the first trial the jury believed  
24 him, and in the second trial I guess they didn't believe  
25 him on this one count, and he stands convicted under this

## JUDGMENT OF CONVICTION OF DEFENDANT BLITZ

United States of America vs.

United States District Court for

DEFENDANT

ERIC BLITZ

Southern District of New York

DOCKET NO. 74 Cr. 1226

## JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH 5 DAY 29 YEAR '75

COUNSEL

☐ WITHOUT COUNSEL

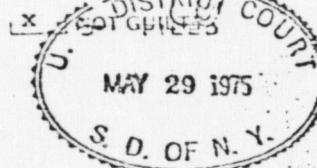
However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Paul Rooney

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,There being a finding, ~~XXXXXX~~☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of as an agent for registered company, unlawfully, wilfully and knowingly accepting compensation other than regular salary or wages from a fund. (Title 15, U.S. Code, Sections 80a-17(e)(1) and 80-a-48.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR and FINED \$5,000.00 on count 19.

SENTENCE  
OR  
PROBATION  
ORDER

FINE is to be paid or the defendant is to stand committed until the fine is paid or he is otherwise discharged according to law.

Bail pending appeal fixed in the amount of \$25,000 Personal Recognizance Bond.

Defendant is to surrender in Tacoma, Wash.

SPECIAL  
CONDITIONS  
OF  
PROBATION

*Sentence stayed pending prompt prosecution of appeal*

*REPROFILM*

*405 5 1975*

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, refuse or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

*A. T. Thompson*

*A. T. Thompson*

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

*John B. Paul*

*29*

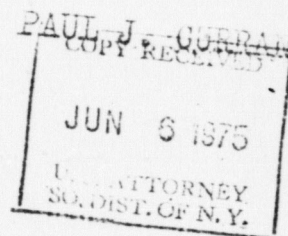
*Attorney General*

*May 29, 1975*



NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
:  
UNITED STATES OF AMERICA  
:  
- V -  
:  
ERIC BLITZ, et. al.,  
:  
Defendants  
:  
-----X

Action Number  
74 Cr. 1226 S (DBB)

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Notice is hereby given that ERIC BLITZ  
above named, hereby appeals to the United States Court of  
Appeals for the Second Circuit from the \* final judgment  
June 6, 19 75.

Signed [Signature]  
Attorney for Eric Blitz  
ROONEY & EVANS  
521 Fifth Avenue  
Address New York, N.Y. 10017

Notice to: A.U.S.A. Dominick Amorosa  
United States Courthouse  
Foley Square  
New York, N. Y. 10007

\* Insert whether order or final judgment:  
or part thereof appealed from.





Received <sup>1</sup> copies of the within  
Appellants Brief Appended  
this 6 day of Aug 1971.

Sign

John D. Gordon

For:

Karl J. Curran Esq(s).

Att'ys for

Plaintiff/Appellee